

**SESSION LAWS**  
**OF**  
**HAWAII**  
**PASSED BY THE**  
**EIGHTEENTH STATE LEGISLATURE**

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**REGULAR SESSION**  
**1996**

Convened on Wednesday, January 19, 1996  
and  
Adjourned sine die on Monday, April 29, 1996

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Revisor of Statutes  
Honolulu, Hawaii

## **AUTHORITY**

**Section 23G-13, Hawaii Revised Statutes, provides as follows:**

**Publishing of session laws.** As soon as possible after the close of each session of the legislature, the revisor of statutes shall prepare for publication all laws duly enacted at such session, arranged in the order of their becoming law, together with a suitable index and tables showing what general statutes have been affected by such session laws.

## PREFACE

This volume contains all of the laws enacted by the Hawaii State Legislature during the Regular Session of 1996. The text of the laws as enacted is followed except for obvious typographical errors, which have been corrected. The text of the laws is printed in full except for laws repealing existing statutes.

As authorized by Section 23G-16.5, Hawaii Revised Statutes, statutory material that is being repealed is bracketed, and new material is indicated by underscoring. However, the text is edited to omit the bracketed material for HRS sections being repealed in their entirety, and to omit the underscoring for new HRS sections.

Explanatory notes appear at the end of the corresponding laws. The notes clarify editorial changes and inconsistencies in text.

Wendell K. Kimura  
Revisor of Statutes

Honolulu, Hawaii  
July 1, 1996

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<sup>1</sup>Appointed to seat vacated by Mary George.

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<sup>1</sup>Appointed to seat vacated by the death of Emilio S. Alcon.

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Eve G. Anderson (R)

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**Session Laws of Hawaii  
Passed By The  
Eighteenth State Legislature  
Regular Session  
1996**

**ACT 1**

H.B. NO. 1

A Bill for an Act Making Appropriations to Provide for the Expenses of the Legislature, the Legislative Auditor, the Legislative Reference Bureau, and the Ombudsman.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$4,813,264, or so much thereof as may be necessary, for defraying any and all session and nonsession expenses of the Senate up to and including June 30, 1997, including, but not limited to, the 1996 regular session, Eighteenth Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 1996 and 1997 regular sessions.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$6,975,848, or so much thereof as may be necessary, for defraying any and all session and nonsession expenses of the House of Representatives up to and including June 30, 1997, including, but not limited to, the 1996 regular session, Eighteenth Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 1996 and 1997 regular sessions.

SECTION 3. Payment of expenses of the Senate during the interim between the 1996 and 1997 regular sessions shall be made only with the approval of the President of the Senate, and payment of expenses of the House of Representatives during the interim between the 1996 and 1997 sessions shall be made only with the approval of the Speaker of the House of Representatives.

SECTION 4. Before January 15, 1997, the Senate and House of Representatives shall have their accounts audited and a full report of such audit shall be presented to the Senate and to the House of Representatives of the Legislature convening on January 15, 1997.

SECTION 5. The expenses of any member of the Legislature while traveling abroad on official business of the Legislature shall not be limited by the provisions

## ACT 1

of section 78-15, Hawaii Revised Statutes, or by any other general statute. Until otherwise prescribed by law, the expenses of such member shall be \$130 a day and authorized by the President of the Senate and the Speaker of the House of Representatives, respectively.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,830,796, to the office of the legislative auditor for the following expenses: (a) the sum of \$2,019,850, or so much thereof as may be necessary, for defraying the expenses of the office of the legislative auditor during the fiscal year 1996-1997; (b) the sum of \$660,946, or so much thereof as may be necessary for defraying the expenses of the office of the state ethics commission during the fiscal year 1996-1997; and (c) the sum of \$150,000, or so much thereof as may be necessary during the fiscal year 1996-1997, for (1) performing special studies, (2) improving capabilities for planning, programming and budgeting, (3) fulfilling other special requests made of the legislative auditor by the Legislature or jointly by the President of the Senate and the Speaker of the House of Representatives, (4) legislative studies and for contractual services for those studies, and (5) such other purposes as may be determined by the joint action of the President of the Senate and the Speaker of the House of Representatives.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,152,984, to the legislative reference bureau, or so much thereof as may be necessary, for defraying the expenses of the legislative reference bureau during the fiscal year 1996-1997, including equipment relating to computer systems programming and operations.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$718,880, or so much thereof as may be necessary, to the office of the ombudsman for defraying the expenses of the office during the fiscal year 1996-1997.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the following sums, or so much thereof as may be necessary, for defraying the expenses of the legislative information system (known as "SHADOW"): (a) \$600,000 to the Senate; and (b) \$600,000 to the House of Representatives. This appropriation shall be utilized to pay for hardware, software, consultant, installation, materials, supplies, and other related costs associated with the legislative information system which have been or will be incurred. This appropriation shall take effect upon its approval and shall not lapse until June 30, 1997.

SECTION 10. As of the close of business on June 30, 1997, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

SECTION 11. Each section of this Act is declared to be severable from the remainder of this Act.

SECTION 12. This Act shall take effect upon its approval.

(Approved February 5, 1996.)

## ACT 2

H.B. NO. 2576

A Bill for an Act Relating to Hansen's Disease.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 326-26, Hawaii Revised Statutes, is amended to read as follows:

**“§326-26 Persons allowed at places for Hansen's disease patients.** (a) No person, not having Hansen's disease, shall be allowed to visit or remain upon any land, place, or inclosure set apart by the department of health for the domiciles and community facilities of persons affected with Hansen's disease, without the written permission of the director of health, or some officer authorized thereto by the department, under any circumstances whatever, and any person found upon such land, place, or inclosure without a written permission shall be fined not less than \$10 nor more than \$100 for such offense; provided that any patient resident of Kalaupapa desiring to remain at the facility shall be permitted to do so for as long as the person may choose, regardless of whether [or not] the person has been successfully treated.

(b) Notwithstanding subsection (a), upon the request of a patient, the non-patient-spouse of a patient residing at Kalaupapa shall be allowed to reside with the patient-spouse at Kalaupapa. The non-patient-spouse shall not be entitled to receive any services or benefits accorded specifically to Hansen's disease patients at Kalaupapa.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 10, 1996.)

## ACT 3

S.B. NO. 2187

A Bill for an Act Relating to Sentencing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 706-662, Hawaii Revised Statutes, is amended to read as follows:

**“§706-662 Criteria for extended terms of imprisonment.** A convicted defendant may be subject to an extended term of imprisonment under section 706-661, if the convicted defendant satisfies one or more of the following criteria:

- (1) The defendant is a persistent offender whose imprisonment for an extended term is necessary for protection of the public. The court shall not make [such a] this finding unless the defendant has previously been convicted of two felonies committed at different times when the defendant was eighteen years of age or older.
- (2) The defendant is a professional criminal whose imprisonment for an extended term is necessary for protection of the public. The court shall not make [such a] this finding unless:

- (a) The circumstances of the crime show that the defendant has knowingly [devoted oneself to] engaged in criminal activity as a major source of livelihood; or
- (b) The defendant has substantial income or resources not explained to be derived from a source other than criminal activity.
- (3) The defendant is a dangerous person whose imprisonment for an extended term is necessary for protection of the public. The court shall not make [such a] this finding unless the defendant has been subjected to a psychiatric or psychological evaluation [which] that documents a significant history of dangerousness to others resulting in criminally violent conduct, and [that such] this history makes the defendant a serious danger to others. Nothing in this section precludes the introduction of victim-related data in order to establish dangerousness in accord with [Hawaii Rules of Evidence.] the Hawaii rules of evidence.
- (4) The defendant is a multiple offender whose criminal actions were so extensive that a sentence of imprisonment for an extended term is necessary for protection of the public. The court shall not make [such a] this finding unless:
  - (a) The defendant is being sentenced for two or more felonies or is already under sentence of imprisonment for felony; or
  - (b) The maximum terms of imprisonment authorized for each of the defendant's crimes, if made to run consecutively would equal or exceed in length the maximum of the extended term imposed, or would equal or exceed forty years if the extended term imposed is for a class A felony.
- (5) The defendant is an offender against the elder, handicapped, or minor under the age of eight whose imprisonment for an extended term is necessary for the protection of the public. The court shall not make [such a] this finding unless:
  - (a) The defendant attempts or commits any of the following crimes: murder, manslaughter, a sexual offense [which] that constitutes a felony under chapter 707, robbery, felonious assault, burglary, [and] or kidnapping; and
  - (b) The defendant, in the course of committing or attempting to commit the crime, inflicts serious or substantial bodily injury upon a person who is:
    - (i) Sixty years of age or older;
    - (ii) Blind, a paraplegic, or a quadriplegic; or
    - (iii) Eight years of age or younger; and
  - (c) Such disability is known or reasonably should be known to the defendant.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 10, 1996.)

ACT 4

S.B. NO. 2885

A Bill for an Act Relating to the Hawaii Paroling Authority.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 706-669, Hawaii Revised Statutes, is amended by amending subsection (7) to read as follows:

“(7) The State shall have the right to be represented at the hearing by the prosecuting attorney who may present written testimony and make oral comments and the authority shall consider such testimony and comments in reaching its decision. The authority shall notify the prosecuting attorney of the hearing at the time the prisoner is given notice of the hearing. The hearing shall be opened to victims or their designees or surviving immediate family members[.] who may present a written statement or make oral comments.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 10, 1996.)

ACT 5

H.B. NO. 3456

A Bill for an Act Relating to Certification of Child Placing Organizations, Child Caring Institutions, and Foster Boarding Homes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 346-17, Hawaii Revised Statutes, is amended to read as follows:

**“§346-17 Child placing organizations, child caring institutions, and foster boarding homes; authority over and investigation of.** No child placing organization shall engage in the investigation, placement, and supervision of minor children in foster care unless it meets with the standards of conditions, management, and competence set by the department of human services.

No child caring institution shall be allowed to receive minor children for care and maintenance unless it meets with the standards of conditions, management, and competence to care for and train children set by the department.

No foster boarding home shall receive for care and maintenance any child unless it meets with the standards of conditions, management, and competence set by the department.

The department shall make rules relating to (1) standards for the organization and administration of child placing organizations, (2) standards of conditions, management, and competence for the care and training of minor children in child caring institutions, and (3) standards of conditions and competence of operation of foster boarding homes as may be necessary to protect the welfare of children.

All rules of the department shall have the force and effect of law, and any violation thereof or of this section shall be punishable by a fine of not more than \$200.

## ACT 6

As a condition for a certificate of approval, any organization, institution, or home shall meet the standards to assure the reputable and responsible character of its operators and employees by complying with the requirements of a criminal history record check under section 346-19.6.

Upon approval of any such organization, institution, or home, the department or its authorized agents shall issue a certificate of approval which shall continue in force for one year or for two years if the organization, institution, or home meets the criteria established by the department, unless sooner revoked for cause. The certificate shall be renewed by the department or its authorized agents, after annual or biennial investigation, if the investigation discloses that the organization, institution, or home continues to meet with the standards set by the department. The certificate of approval shall be a permit to operate the child placing organization, child caring institution, or foster boarding home, and no person or organization shall operate or maintain such organization, institution, or home without the certificate.

Any child placing organization, child caring institution, or foster boarding home shall be subject to investigation at any time and in such manner, place, and form as may be prescribed by the department or its authorized agents."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 11, 1996.)

## ACT 6

H.B. NO. 4035

A Bill for an Act Relating to Packaged Soil.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The current standard for sale of packaged soil, sand gravel, and the like, which is regulated through administrative rules, is for soil and soil amendments to be sold in specific units.

The purpose of this Act is to replace the current standard with wording to conform with the National Institute of Standards and Technology Handbook, 130 (1993 edition). The change would better maximize the use of container space and reduce shipping costs per unit, with the ultimate beneficiaries being consumers.

SECTION 2. Chapter 486, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§486- Packaged soil, sand, gravel, volcanic cinders, woodshavings, crushed rock, compost, soil amendments, shredded hapuu, hapuu chunks, planting mixes or media, chicken or steer manure, redwood bark, and the like.**  
(a) Packaged soil, sand, gravel, volcanic cinders, woodshavings, crushed rock, compost, soil amendments, shredded hapuu, hapuu chunks, planting mixes, chicken or steer manure, redwood bark, and other similar media for planting, shall be marketed:

- (1) By cubic measure:
  - (A) In the inch-pound system, by cubic feet, or fractions thereof; and
  - (B) In the SI, by liters, or fractions thereof;and
- (2) By volume measure, in terms of whole dry quarts.



(b) A commodity marketed in terms of compressed cubic measurement shall be labeled to reflect the quantity in the compressed state and the quantity from which the final product was compressed, the latter declaration not exceeding the actual amount of material that can be recovered.

(c) Processed pelletized, dried, or dehydrated poultry waste (chicken manure) and the like may be sold by weight."

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect July 1, 1996, and shall be repealed on June 30, 1999.

(Approved April 11, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 7**

S.B. NO. 2783

A Bill for an Act Relating to Drug Demand Reduction Assessments.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 205, Session Laws of Hawaii 1995, is amended by amending section 4 to read as follows:

"SECTION 4. This Act shall take effect upon its approval and shall be repealed on June 30, [1996] 1998."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 29, 1996.

(Approved April 11, 1996.)

**ACT 8**

S.B. NO. 2128

A Bill for an Act Relating to Business Development Corporations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 420-2, Hawaii Revised Statutes, is amended to read as follows:

**"§420-2 Creation of corporation; purposes.** (a) Any number of persons not less than [five,] two, [a majority] at least one of whom shall be [residents] a resident of the State, who may desire to create a business development corporation under this chapter, for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the Pacific Islands and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated in the following manner; [such] the persons [shall], by articles of incorporation filed with the director of commerce and consumer affairs, under their hands and seals, shall set forth:

- (1) The name of the corporation, which shall include the words "Business Development Corporation".
- (2) The location of the principal office of the corporation, but the corporation may have offices in such other places within the State as may be fixed by the board of directors.
- (3) The purpose for which the corporation is founded, which shall include the following:

The purposes of the corporation shall be to promote, stimulate, develop, and advance the business prosperity and economic welfare of the Pacific Islands and their citizens; to encourage and assist through loans, investments, or other business transactions, in the location of new business and industry in the Pacific Islands and to rehabilitate and assist existing business and industry; and so to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of the Pacific Islands, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of the Pacific Islands; similarly, to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in the Pacific Islands, and to provide financing for the promotion, development, and conduct of all kinds of business activity in the Pacific Islands.

(b) In furtherance of [these] the purposes in subsection (a) and in addition to the powers conferred on business corporations by the general corporation laws, the corporation [shall], subject to the restrictions and limitations [herein contained,] in this chapter, shall have the following powers:

- (1) To elect, appoint, and employ officers, agents, and employees; to make contracts and incur liabilities for any of the purposes of the corporation; provided that the corporation shall not incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, corporation, joint-stock company, association, or trust, or in any other manner[.];
- (2) To borrow money from the members and others, including the Small Business Administration and other federal agencies, for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature or any part thereof or interest therein, without securing stockholder or member approval[.];
- (3) To make loans to any person, firm, corporation, joint-stock company, association, or trust, and to establish and regulate the terms and conditions with respect to the loans and the charges for interest and service connected therewith; provided that the corporation shall not approve any application for a loan unless and until the person applying for the loan shows that the person has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution[.];
- (4) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations[.];

- (5) To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, joint-stock companies, associations, or trusts, and to assume, undertake, or pay the obligations, debts, and liabilities of any such person, firm, corporation, joint-stock company, association, or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of the real estate to others for the construction of industrial plants or other business establishments; and to acquire, construct, or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments[.];
- (6) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint-stock company, association, or trust, and while the owner or holder thereof to exercise all of the rights, powers, and privileges of ownership, including the right to vote thereon[.];
- (7) To mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in paragraphs (4), (5), or (6), as security for the payment of any part of the purchase price thereof[.];
- (8) To cooperate with and avail itself of the facilities of the department of business, economic development, and tourism and any similar governmental agencies; and to cooperate with and assist, and otherwise encourage organizations in the various communities of the Pacific Islands in the promotion, assistance, and development of the business prosperity and economic welfare of the communities or of the Pacific Islands or of any part thereof[.];
- (9) To avail itself of any loan or other assistance from nonmembers, including the Small Business Administration or any other federal agencies[.]; and
- (10) To do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 12, 1996.)

## ACT 9

S.B. NO. 2521

A Bill for an Act Relating to Financial Services Loan Companies.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 412:9-201, Hawaii Revised Statutes, is amended to read as follows:

**“§412:9-201 Powers that require regulatory approval.** (a) A financial services loan company may sell or refer the following products and services and collect premiums or fees for the sale or referral thereof only after obtaining the approval of the commissioner:

- (1) Accidental death and dismemberment insurance, whether or not connected with a loan, provided that the purchase of [such] this insurance must be voluntary and not required as a condition of a loan. The approval of the insurance commissioner must also be obtained prior to the sale of any insurance product; and
- (2) Auto club memberships and home and automobile security plans, whether or not connected with a loan and extension of credit, provided that the purchase of any such service or product must be voluntary and not required as a condition of a loan.

(b) In approving any request to sell or refer the products and services in subsection (a), the commissioner may impose such conditions and restrictions that are in the public interest.

(c) A financial services loan company may issue standby letters of credit only after obtaining the written approval of the commissioner. In approving any request to issue standby letters of credit pursuant to this subsection, the commissioner may impose conditions and restrictions that are in the public interest. Any depository financial services loan company issuing standby letters of credit shall include those standby letters of credit with all other loans and extensions of credit for the purpose of calculating the limit on loans and extensions of credit to one borrower under section 412:9-404. Any nondepository financial services loan company issuing standby letters of credit shall report the aggregate amount of their standby letters of credit outstanding under MEMORANDA - Total Standby Letters of Credit Outstanding, on their financial statements submitted to the commissioner pursuant to section 412:3-112. The aggregate amount of the standby letters of credit outstanding shall not exceed twenty per cent of a nondepository financial services loan company's capital and surplus. Standby letters of credit issued by a nondepository financial services loan company shall not be used for consumer loan transactions. The issuing nondepository financial services loan company shall identify itself as a nondepository financial services loan company in the standby letter of credit.”

SECTION 2. Section 421:9-400,<sup>1</sup> Hawaii Revised Statutes, is amended to read as follows:

**“§412:9-400 Special powers of a depository financial services loan company.** In addition to the powers granted in parts II and III of this article, depository financial services loan companies, but not nondepository financial services loan companies, shall have the right, power, and privilege to:

- (1) Solicit, accept, and hold deposits from any person, whether or not a resident of or domiciled in this State, and issue documents evidencing the accounts[. Provided];<sup>2</sup> provided that a depository financial services loan company shall not solicit, accept, or hold demand deposits or authorize a depositor to make transfers by check, draft, debit card, negotiable order of withdrawal, or similar order, payable to third parties;
- (2) Sell fixed rate annuities and collect premiums and fees for the sale or referral of those fixed rate annuities, if the written approval of the commissioner is first obtained. The depository financial services loan company shall comply with all applicable requirements of chapter 431. Sales shall be made by a general agent, subagent, or solicitor licensed pursuant to chapter 431. In approving any request to sell or refer fixed

- rate annuities pursuant to this paragraph, the commissioner may impose conditions and restrictions that are in the public interest;
- [(3) Issue standby letters of credit, if the written approval of the commissioner is obtained. In approving any request to issue standby letters of credit pursuant to this paragraph, the commissioner may impose conditions and restrictions that are in the public interest. Any depository financial services loan company issuing standby letters of credit shall include those obligations in computing the total loans and extensions of credit to a person outstanding at any one time which are subject to the limitations in section 412:9-404;] and
- [(4)] (3) Offer gifts, premiums, other considerations, or promotional items to solicit deposits. Premiums may be offered in lieu of all or part of the interest on deposits.”

SECTION 3. Section 412:9-500, Hawaii Revised Statutes, is amended to read as follows:

“**§412:9-500 Prohibitions.** Except as otherwise expressly authorized by this chapter or other law, a nondepository financial services loan company shall not[:

- (1) Solicit,] solicit, accept, or hold deposits, investment certificates, thrift certificates, or other accounts or instruments identical or similar to a deposit account, nor shall it borrow money in the form of, or issue, promissory notes, debentures, bonds, or other obligations to the public; provided[, however,] that a nondepository financial services loan company may borrow funds from, and issue its notes, debentures, bonds, or other obligations to financial institutions and other institutional lenders and not more than twenty-five institution-affiliated parties at any one time[; or
- (2) Issue standby letters of credit].”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 12, 1996.)

#### Notes

1. So in original.
2. Should be underscored.

## ACT 10

S.B. NO. 2685

A Bill for an Act Relating to Deposit of Publications.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 93-3, Hawaii Revised Statutes, is amended to read as follows:

“**§93-3 Deposit of publications.** Every state and county agency shall immediately upon release of a publication, deposit fifteen copies with the state publications distribution center and one copy [each] with [the state archives and] the University of Hawaii. Additional copies of the publications shall be deposited with

the publications distribution center upon request of the state librarian so long as copies are available.

The state librarian may enter into depository agreements with private and public educational, historical, or scientific institutions or other libraries, within or without the State in order to achieve the objectives sought under this part."

SECTION 2. Statutory material to be repealed is bracketed.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 12, 1996.)

## ACT 11

S.B. NO. 2739

A Bill for an Act Relating to Gift Certificates.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 481B-13, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§481B-13]]~~ **Gift certificates.** (a) Any restaurant or person engaged in the business of offering services or goods for sale at retail may allow customers to purchase gift certificates; provided that the certificate issuer shall honor the certificate for a period of at least ~~[one year]~~ two years from the date of issuance. [If a certificate recipient is unable to redeem the certificate within the one-year period, the certificate issuer shall extend the life of the certificate for one additional year.]

(b) A certificate issuer shall include ~~[the following information]~~ the expiration date on the face of any gift certificate that has an expiration date[:

- (1) The expiration date of the certificate, which shall be at least one year from the date the certificate was issued; and
- (2) That in the event the recipient does not redeem the certificate within the one-year period, the issuer shall extend the life of the certificate for one additional year].

(c) Any violation of subsection (a) or (b) shall constitute ~~[an unfair method of competition and]~~ an unfair ~~[or]~~ and deceptive act or practice in the conduct of ~~[any]~~ trade or commerce ~~[under]~~ within the meaning of section 480-2.

(d) As used in this section, unless the context requires otherwise:

"Certificate issuer" or "issuer" means a restaurant or a person engaged in the business of offering services or goods for sale at retail who sells gift certificates to customers.

"Certificate recipient" or "recipient" means the person for whom the gift certificate is intended.]

"Gift certificate" or "certificate" ~~[means a certificate for which]~~ includes any writing for which the certificate issuer has received payment for the full face value of the certificate[. The certificate shall be valid] for future purchases or delivery of goods [and] or services [offered for sale by the certificate issuer unless expressly excluded]."

SECTION 3.<sup>1</sup> Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4.<sup>1</sup> This Act shall take effect upon its approval.

(Approved April 12, 1996.)

**Note**

1. So in original.

**ACT 12**

H.B. NO. 2403

A Bill for an Act Relating to the Statewide Traffic Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 291C-204, Hawaii Revised Statutes, is amended to read as follows:

**“[[§291C-204[]] Defacing serial numbers, etc., of mopeds.** No person shall wilfully deface, destroy, or alter the serial number, a component part number, or identification mark placed on any moped by the manufacturer thereof.

This section shall not prohibit the restoration by an owner of an original mark or number when the restoration is authorized in writing by the director of finance, nor prohibit any manufacturer from placing in the ordinary course of business numbers or marks upon new mopeds or new parts thereof. Violation of this section shall be a misdemeanor and shall result in a fine of not more than \$500.”

SECTION 2. Section 291C-205, Hawaii Revised Statutes, is amended to read as follows:

**“[[§291C-205[]] Unlawful to possess certain mopeds and moped parts.** It shall be unlawful for any person to possess a moped, a moped motor, or any moped part knowing that the serial or identification number placed thereon by the manufacturer has been changed, altered, erased or mutilated.

This section shall not prohibit the possession of a moped, a moped motor, or any moped part whose original mark or number has been restored when the restoration is authorized in writing by the director of finance, nor prohibit any manufacturer from placing in the ordinary course of business numbers or marks upon new mopeds or new parts thereof. Violation of this section shall be a misdemeanor and shall result in a fine of not more than \$500.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

A Bill for an Act Relating to Statutory Revision: Amending, Reenacting, or Repealing Various Provisions of the Hawaii Revised Statutes and the Session Laws of Hawaii for the Purpose of Correcting Errors and References, Clarifying Language, and Deleting or Repealing Obsolete or Unnecessary Provisions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 6E-8, Hawaii Revised Statutes, is amended to read as follows:

**“§6E-8 Review of effect of proposed state projects.** (a) Before any agency or officer of the State or its political subdivisions commences any project which may affect historic property or a burial site, the agency or officer shall advise the department and allow the department an opportunity for review of the effect of the proposed project on historic properties or burial sites, consistent with section 6E-43, especially those listed on the Hawaii register of historic places. The proposed project shall not be commenced, or in the event it has already begun, continued, until the department shall have given its written concurrence.

The department is to provide written concurrence or non-concurrence within ninety days after the filing of a request with the department. The agency or officer seeking to proceed with the project, or any person, may appeal the department's concurrence or non-concurrence to the Hawaii historic places review board. An agency, officer, or other person who is dissatisfied with the decision of the review board may apply to the governor who may request the Hawaii advisory council on historic preservation to report or who may take action as the governor deems best in overruling or sustaining the department.

(b) The department of Hawaiian home lands, prior to any proposed project relating to lands under its jurisdiction, shall consult with the department regarding the effect of the project upon historic property or a burial site.

(c) The State, its political subdivisions, agencies, and officers shall report to the department the finding of any historic property during any project and shall cooperate with the department in the investigation, recording, preservation, and salvage of the property.”

SECTION 2. Section 11-196, Hawaii Revised Statutes, is amended to read as follows:

**“§11-196 Organizational report, candidate's committee.** (a) The organizational report shall include:

- (1) The name and address of the candidate or individual, committee, or party filing the report;
- (2) The name, address, office sought, district, and party affiliation, of each candidate or individual whom the committee or party is supporting;
- (3) The names and addresses of the campaign treasurer and deputies together with the treasurer's written acceptance of appointment;
- (4) The names and addresses of the campaign chairperson and deputy campaign chairperson together with the campaign chairperson's written acceptance of appointment;
- (5) A list of all banks, safety deposit boxes, or other depositories used with each applicable account number;



- (6) The amount, name, and address, of each donor who has contributed an aggregate amount of more than \$100 since the last election applicable to the office being sought or to the ballot issue or question and the amount and date of deposit of each such contribution; and
- (7) In the case of a report by a committee or party supporting or opposing a ballot question or issue, all of the information described in paragraphs (2) to (6) and a description of the question or issue.

(b) Any change in information submitted in the organizational report with the exception of subsection (a)(6) shall be reported no later than 4:30 p.m. on the tenth calendar day after such change is brought to the attention of the candidate, committee, party, or campaign treasurer."

SECTION 3. Section 103D-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Notwithstanding subsection (a), this chapter shall not apply to contracts by governmental bodies:

- (1) Solicited or entered into before July 1, 1994, unless the parties agree to its application to a contract solicited or entered into prior to July 1, 1994;
- (2) To disburse funds, irrespective of their source:
  - (A) For grants, subsidies, or purchases of services as those terms are defined in section 42D-1, made in accordance with standards provided by law as required by article VII, section 4, of the State Constitution; or by the counties pursuant to their respective charters or ordinances;
  - (B) To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, or reimbursements;
  - (C) To satisfy obligations which the State is required to pay by law, including paying fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the State as trustee, custodian, or bailee;
  - (D) For entitlement programs, including public assistance, unemployment, and [workers] workers' compensation programs, established by state or federal law;
  - (E) For dues and fees of organizations of which the State or its officers and employees are members, including the National Association of Governors, the National Association of State and County Governments, and the Multi-State Tax Commission;
  - (F) For deposit, investment, or safekeeping, including expenses related to their deposit, investment, or safekeeping;
  - (G) To governmental bodies of the State; and
  - (H) As loans, under loan programs administered by a governmental body;
- (3) To procure goods, services, or construction from a governmental body other than the University of Hawaii bookstores, from the federal government, or from another state or its political subdivision;
- (4) [Procurement of] To procure goods or services, including the following:
  - (A) Services of expert witnesses for potential and actual litigation of legal matters involving the State, its agencies, and its officers and employees, including administrative quasi-judicial proceedings;
  - (B) Works of art for museum or public display;

- (C) Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print, video, audio, magnetic, or electronic form;
- (D) Meats and foodstuffs for the Kalaupapa settlement;
- (E) Opponents for athletic contests;
- (F) Utility services whose rates or prices are fixed by regulatory processes or agencies;
- (G) Performances, including entertainment, speeches, and cultural and artistic presentations;
- (H) Goods and services for commercial resale by the State;
- (I) Services of printers, rating agencies, support facilities, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds; and
- [[ ](J)[ ]] Travel arrangements purchased by the University of Hawaii for its intercollegiate athletic programs;  
 which the policy office determines by rule or the chief procurement officer determines in writing is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State; and
- (5) [Made by governmental bodies, or] Which are specific procurements [which are] expressly exempt from any or all of the requirements of this chapter by:
  - (A) References in state or federal law to provisions of this chapter or a section of this chapter, or references to a particular requirement of this chapter;
  - (B) Trade agreements, including the Uruguay Round General Agreement on Tariffs and Trade (GATT) which require certain non-construction and non-software development procurements by the comptroller to be conducted in accordance with its terms."

SECTION 4. Section 188-29, Hawaii Revised Statutes, is amended to read as follows:

**"§188-29 Nets and traps.** (a) It is unlawful for any person to use nets made of or using netting, or bullpen traps, with a stretched mesh of less than two inches, except that:

- [(1)] Persons engaged in sport fishing may use throw nets with stretched mesh of not less than one and one-half inches until December 31, 1994; thereafter, persons engaged in sport fishing may not use throw nets with stretched mesh of less than two inches;
- [(2)] (1) Pond owners or operators who hold a license issued under section 188-44 may use nets of smaller mesh to take young mullet or pua for stocking their fish ponds;
- [(3)] (2) Commercial marine licensees who hold a license issued under section 188-45 may use nets of smaller mesh to take nehu, iao, marquesan sardine, or any other species for which an open season may be declared by the department of land and natural resources for use as bait;
- [(4)] (3) All persons may use nets of smaller mesh to take shrimp or opae, opelu, makiawa, or mikiawa;
- [(5)] (4) Aquarium fish collectors with a valid aquarium fish permit issued by the department pursuant to section 188-31 may use nets of smaller mesh, but not throw nets, to fish for aquarium fish in conformance with the conditions of the permit, provided that noncommercial aquarium

fish collectors shall be limited to a combined total of five fish or aquatic life specimens per person per day;

- [(6)] (5) All persons may use a net with mesh of not less than one and one-half inches to take akule; provided that no akule measuring less than eight and one-half inches in total length from the tip of the snout to the tip of the tail shall be taken with a net during the months of July, August, September, and October;
- [(7)] (6) All persons engaged in surround net fishing with scuba, may use nets with mesh of not less than one and one-half inches only to bag and transport the fish captured with legal gear to the shore or the boat;
- [(8)] (7) All persons engaged in stationary monofilament gill net fishing may use monofilament gill netting with a stretched mesh of not less than two inches until December 31, 1996; thereafter it shall be unlawful for any person to use stationary monofilament gill nets made of or using monofilament gill netting with a stretched mesh of less than two and three-fourths inches; and
- [(9)] (8) All persons may use hand nets or scoop nets of smaller mesh to take fish or other marine life for noncommercial purposes only; provided that the net, including any handle and other attachment thereto, shall not exceed three feet in any dimension.

(b) It is unlawful for any person to use any type of trap which is not portable or which is more than ten feet in length or six feet in height or width. Except for traps of smaller mesh to take shrimp or opae, and for the entrance cone, it shall also be unlawful to use traps:

- (1) With netting having a stretched mesh of less than two inches; or
- (2) Made with plastic, wire, coated wire, or any other stiff material with a rigid mesh of less than two inches long by one inch wide[;

provided that existing traps otherwise prohibited by paragraph (2) which are registered with the department of land and natural resources by October 1, 1989, may be used until June 30, 1994].

(c) The department of land and natural resources may, pursuant to chapter 91, adopt rules relating to requirements for escape openings or devices on any type of nets or traps.

The rules shall include provisions describing the type, measurements, and locations of escape openings or devices on traps under this subsection and become effective three years after establishment.”

SECTION 5. Section 286-52, Hawaii Revised Statutes, is amended:

1. By amending subsection (b) to read as follows:

“(b) Within thirty calendar days thereafter, the transferee shall forward [both] the certificate of ownership so endorsed to the director of finance who shall file the same. Whenever a transferee fails to comply with these provisions, the director of finance shall charge a fee of \$50, in addition to the fee provided in section 286-51, for a new certificate of ownership.”

2. By amending subsection (l) to read as follows:

“(l) A licensed dealer who has forwarded a properly endorsed certificate of ownership to the director of finance shall be relieved of any civil liability, from the date the transferor delivers the motor vehicle into the transferee’s possession, which the transferor might otherwise subsequently incur by reason solely of being the registered owner of the vehicle; provided that a specific written authorization to forward the [certificates] certificate has been obtained from the transferee.”

SECTION 6. Section 342B-56, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) After June 30, 1995, any person may commence a civil action on that person’s own behalf against:

- (1) Any person (including the State and the director) who is alleged to be in violation of this chapter, including any emission standard or limitation or any order issued by the director;
- (2) The director where there is alleged a failure to perform any act or duty under this chapter which is not discretionary; or
- (3) Any person who proposes to construct or constructs any new or modified major emitting facility without a required permit or who is alleged to be in violation of any condition of such permit.

This subsection shall not apply before April 1, 1996 to violations of permits related to agricultural burning; provided further that the governor may extend this deadline for an additional three months [to accomplish the purposes of this Act].”

SECTION 7. Section 412:5-400, Hawaii Revised Statutes, is amended by amending the definition of “reciprocal region” to read as follows:

““Reciprocal region” means any one of the territories or countries of Guam, American Samoa, the Federated States of Micronesia, the Republic of Palau, the Commonwealth of the Northern [Marianas,] Mariana Islands, or the Republic of the Marshall Islands, only so long as:

- (1) Its economy is based on the United States dollar; and
- (2) Its laws allow a bank that is a Hawaii financial institution or its holding company to establish and operate a branch or acquire the assets or control of or merge with a bank or bank holding company in that territory or country, under terms and conditions which are substantially comparable to or less restrictive than the laws of this State concerning the commencement of operations, acquisitions, change of control and mergers of banks and bank holding companies.”

SECTION 8. Section 415A-2, Hawaii Revised Statutes, is amended by amending the definition of “professional service” to read as follows:

““Professional service” means any service which lawfully may be rendered only by persons licensed under chapters 442, 448, 453, 455, 459, 460, 461, 463E, 465, 466, 471, [554-2, and] 605, and section 554-2, and may not lawfully be rendered by a corporation organized under the Hawaii Business Corporation Act, chapter 415.”

SECTION 9. Section 415A-24, Hawaii Revised Statutes, is amended to read as follows:

“**§415A-24 Interrogatories by director.** The director may direct to any professional corporation organized to practice a profession within the jurisdiction of the director and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable the director to ascertain whether the corporation has complied with all of the provisions of this chapter applicable to the corporation. The interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the director, and the answers thereto shall be full and complete and shall be made in writing and under oath. If the interrogatories are directed to an individual, they shall be answered by

the individual, and if directed to a professional corporation, they shall be answered by the president, vice president, secretary, or assistant secretary thereof. The director shall certify to the attorney general, for any action the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter.

Interrogatories directed to an individual or a professional corporation by the director and the answers thereto shall not be open to public inspection nor shall the director disclose any facts or information obtained therefrom except insofar as [its] the director's official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceeding or any other action by this State."

SECTION 10. Section 415A-28, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**"§415A-28 [Applications and] Application to existing corporations."**

SECTION 11. Section 425D-906, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**"[[§425D-906] Cancellation of registration.] Certificate of withdrawal."**

SECTION 12. Section 443B-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

**"(c) Any collection agency which has filed a bond with the director and maintained that bond in full force and effect, and which has not filed an application and paid the registration fee within ninety days of June 6, 1987, shall submit an application in the same manner as a new applicant subject to the provisions of [section] sections 443B-4[,], and 443B-6[,], and 443B-7[.]"**

SECTION 13. Section 448-15, Hawaii Revised Statutes, is amended to read as follows:

**"§448-15 No corporation to practice dentistry; penalty. No corporation shall practice dentistry or engage therein, or hold itself out as being entitled to practice dentistry, or furnish dental services or dentists, or advertise under or assume the title of dentist or dental surgeon or equivalent title, or furnish dental advice for any compensation, or advertise or hold itself out with any other person or alone, that it has or owns a dental office or can furnish dental service, dentists, or dental surgeons, or solicit through itself, or its agents, officers, employees, directors, or trustees, dental patronage for any dentist or dental surgeon employed by any corporation; provided that nothing in this section shall prohibit a corporation from employing a dentist or dentists to render free dental services to its employees, nor shall it apply to corporations or associations in which the dental services were originated and are being conducted upon a purely charitable basis for the worthy poor, nor shall it apply to corporations or associations furnishing information or clerical services which can be furnished by persons not licensed to practice dentistry, to any person lawfully engaged in the practice of dentistry, when the dentist assumes full responsibility for the information and services, nor shall it apply to dental service corporations formed for the primary purpose of contracting with individuals, groups of individuals, and corporations for defraying or assuming the cost of services of dentists and dental surgeons and of contracting on behalf of dentists and**

dental surgeons to furnish such services as provided in chapter 423, nor shall it apply to professional corporations as defined in chapter [416.] 415A. Any corporation violating this section shall be fined not less than \$200 or more than \$500 for each offense, and each day's violation shall be considered a separate offense.

Every association of persons engaged in the practice of dentistry under the name of an association or other title, shall cause to be displayed and kept in a conspicuous place at the entrance to its place of business the names of each and every person employed by the association in the practice of dentistry; and every person so employed by any association shall cause the person's name to be so displayed. Any person employed by the association whose name is not displayed as above provided shall be guilty of a failure to comply with this chapter and shall be punished as in this chapter provided; and the association, and the persons comprising the same, for failure to display the aforesaid names, shall be guilty of a failure to comply with this chapter and shall be punished as in this chapter provided."

SECTION 14. Section 468E-5, Hawaii Revised Statutes, is amended to read as follows:

**"§468E-5 Eligibility for licensure.** To be eligible for licensure by the board as a speech pathologist or audiologist, a person shall:

- (1) Possess at least a master's degree or its equivalent in the area of speech pathology or audiology, as the case may be, from an educational institution recognized by the board;
- (2) Submit to the board evidence of eligibility for meeting the requirements of the American [Speech and Hearing] Speech-Language-Hearing Association for the certificate of clinical competence in speech pathology [and/or audiology;] or audiology, or both; and
- (3) Pass a written examination approved by the board."

SECTION 15. Section 576D-1, Hawaii Revised Statutes, is amended by amending the definition of "department" to read as follows:

""Department" means the [department of social services and housing until June 30, 1987, and the] department of attorney general [from July 1, 1987], unless otherwise specified."

SECTION 16. Section 576D-2, Hawaii Revised Statutes, is amended to read as follows:

**"[§576D-2] Designation of child support enforcement agency; duties.** There is created the child support enforcement agency for the State as required under Title IV-D. [Until June 30, 1987, the agency shall be within the department of social services and housing. From July 1, 1987, the] The agency shall be within the department of the attorney general. The child support enforcement agency shall:

- (1) Be responsible for formulating the state child support enforcement plan as required under Title IV-D; and
- (2) Administer this chapter consistent with Title IV-D and applicable state laws."

SECTION 17. Section 46-1.6, Hawaii Revised Statutes, is repealed.

SECTION 18. Section 237D-3.5, Hawaii Revised Statutes, is repealed.

SECTION 19. Section 352D-8, Hawaii Revised Statutes, is repealed.

SECTION 20. Act 194, Session Laws of Hawaii 1992, is amended by amending section 20 to read as follows:

“SECTION 20. This Act shall take effect on July 1, 1992, and shall be repealed on July 1, 1996; provided that sections 42D-1, [42D-2,] 42D-3, 42D-4, 42D-5, 42D-6, [42D-7(a),] 42D-8, 42D-9, 42D-12(a), 42D-21(b) and (c), 42D-23, 42D-24(a), 42D-25, and 42D-31[, 42D-32, 42D-33, and 42D-34] shall be reenacted in the form in which they [read on the day before the approval of this Act.] were enacted by Act 335, Session Laws of Hawaii 1991; except as provided in Act 118, Session Laws of Hawaii 1995.”

SECTION 21. Act 27, Special Session Laws of Hawaii 1995, is amended:

1. By repealing section 6.

[“SECTION 6. Section 11-193, Hawaii Revised Statutes, is amended by amending the title and subsection (a) to read as follows:

**“§11-193 Duties of the [lieutenant governor;] chief election officer; commission.** (a) The principal duty of [the lieutenant governor as] the chief election officer is to regulate the election process. Under this subpart the [lieutenant governor’s] chief election officer’s duties are:

- (1) To develop and adopt reporting forms required by this subpart;
- (2) To adopt and publish a manual for all candidates and committees, describing the requirements of this subpart, including uniform and simple methods of recordkeeping;
- (3) To preserve all reports required by this subpart for at least five years from the date of receipt;
- (4) To permit the inspection, copying, or duplicating of any report required by this subpart pursuant to rules adopted by the commission; provided that no information or copies from the reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose.”]

2. By amending section 13 to read as follows:

“SECTION 13. Sections 11-5[, 11-193,] and 26-1, Hawaii Revised Statutes, as amended by this Act, shall be amended to conform to amendments made to those sections by any acts passed by the legislature during the regular session of 1995, whether the effective dates of those acts are before or after the effective date of this Act.”

3. By amending section 15 to read as follows:

“SECTION 15. This Act shall take effect on July 1, 1995; provided that on June 30, 1999, this Act shall be repealed and sections 11-1, 11-2, 11-5, 11-191[, 11-193,] 11-194, 11-195, 11-216, 12-8, and 26-1, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.”

SECTION 22. This Act shall be amended to conform to all other acts passed by the legislature during this regular session of 1995, whether enacted before or after the effective date of this Act, unless the other acts specifically provide otherwise.

## ACT 14

SECTION 23. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 24. This Act shall take effect upon its approval; provided that section 20 shall take effect on June 30, 1996.

(Approved April 22, 1996.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 14

H.B. NO. 2517

A Bill for an Act Relating to the Promotion of Prostitution.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the corroboration requirement in section 712-1205, Hawaii Revised Statutes, is an archaic and unnecessary impediment to the prosecution of persons who "advance" or "profit from" prostitution. Specifically, section 712-1205 prohibits the conviction of a person for promoting prostitution solely upon the uncorroborated testimony of a person whose prostitution activity the former person is alleged to have advanced, or from whose prostitution activity the former person is alleged to have profited. The commentary to section 712-1205, which was part of the original 1972 statute, states that relying solely on the uncorroborated testimony of a prostitute presents "grave risks".

The legislature also finds that there is no corroboration requirement for cases in which prosecutions are based upon the testimony of accomplices, drug dealers, and other criminals. Consequently, section 712-1205 sets out one class of criminals for favorable treatment. The substantive criminal law, which requires proof beyond a reasonable doubt, and the criminal procedure law, which affords the defense the opportunity to have the sufficiency of the prosecution's evidence tested by the court pursuant to a motion for judgment of acquittal, are adequate to guard against the conviction of innocent persons.

SECTION 2. Section 712-1205, Hawaii Revised Statutes, is repealed.

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

### Note

1. Edited pursuant to HRS §23G-16.5.



## ACT 15

H.B. NO. 2620

A Bill for an Act Relating to Sentencing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 706-656, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) [Persons] Except as provided in section 706-657, pertaining to enhanced sentence for second degree murder, persons convicted of second degree murder and attempted second degree murder shall be sentenced to life imprisonment with possibility of parole. The minimum length of imprisonment shall be determined by the Hawaii paroling authority; provided that persons who are repeat offenders under section 706-606.5 shall serve at least the applicable mandatory minimum term of imprisonment[; and provided further that in any cases designated in section 706-657, the person may be sentenced to life imprisonment without possibility of parole].

If the court imposes a sentence of life imprisonment without possibility of parole[,] pursuant to section 706-657, as part of [such] that sentence, the court shall order the director of public safety and the Hawaii paroling authority to prepare an application for the governor to commute the sentence to life imprisonment with parole at the end of twenty years of imprisonment; provided that persons who are repeat offenders under section 706-606.5 shall serve at least the applicable mandatory minimum term of imprisonment.”

SECTION 2. Section 706-657, Hawaii Revised Statutes, is amended to read as follows:

“**[§706-657] Enhanced sentence for second degree murder.** The court may sentence a person who has been convicted of murder in the second degree to life imprisonment without possibility of parole under section 706-656 if the court finds that the murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity[.] or that the person was previously convicted of the offense of murder in the first degree or murder in the second degree in this State or was previously convicted in another jurisdiction of an offense that would constitute murder in the first degree or murder in the second degree in this State. As used in this section, the phrase “especially heinous, atrocious, or cruel, manifesting exceptional depravity” means a conscienceless or pitiless crime which is unnecessarily torturous to a victim[.] and “previously convicted” means a sentence imposed at the same time or a sentence previously imposed which has not been set aside, reversed, or vacated.

Hearings to determine the grounds for imposing an enhanced sentence for second degree murder may be initiated by the prosecutor or by the court on its own motion. The court shall not impose an enhanced term unless the ground therefor has been established at a hearing after the conviction of the defendant and on written notice to the defendant of the ground proposed. Subject to the provision of section 706-604, the defendant shall have the right to hear and controvert the evidence against the defendant and to offer evidence upon the issue.

The provisions pertaining to commutation in section 706-656(2), shall apply to persons sentenced pursuant to this section.”

## ACT 16

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

## ACT 16

H.B. NO. 2850

A Bill for an Act Relating to Highway Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-235.5, Hawaii Revised Statutes, is amended to read as follows:

**“[[§286-235.5]] Persons exempt from license.** The following persons shall be exempt from licensure under this part:

- (1) Any active duty military personnel while operating a commercial motor vehicle in the service of the United States Department of Defense, provided that the driver has a current valid license or permit from the Department of Defense to drive the commercial motor vehicle; and
- (2) Federal, state, and county firefighters who drive federal, state, or county fire trucks, provided that they are trained by the federal, state, or county government.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

## ACT 17

H.B. NO. 2869

A Bill for an Act Relating to Parentage.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 584-8, Hawaii Revised Statutes, is amended to read as follows:

**“§584-8 Jurisdiction; venue.** (a) Without limiting the jurisdiction of any other court, the family court has jurisdiction of an action brought under this chapter. The action may be joined with an action for divorce, annulment, separate maintenance, or support.

(b) A person who has sexual intercourse in this State thereby submits to the jurisdiction of the courts of this State as to an action brought under this chapter with

respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by statute, personal jurisdiction may be acquired by personal service outside this State or by service by certified or registered mail, postage prepaid, with return receipt requested.

(c) In addition to any other method of service provided by statute or court rule, if the defendant is not found within the circuit, service may be effectuated by registered or certified mail, with request for a return receipt and direction to deliver to addressee only. The return receipt signed by the defendant shall be prima facie evidence that the defendant accepted delivery of the complaint and summons on the date set forth on the receipt. Actual receipt by the defendant of the complaint and summons sent by registered or certified mail shall be equivalent to personal service on the defendant by an authorized process server as of the date of the receipt.

[(c)] (d) The action may be brought in the county in which the child, the mother, or the alleged father resides or is found[,] or in which the child was born or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

## ACT 18

H.B. NO. 2896

A Bill for an Act Relating to Notaries Public.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 456-6, Hawaii Revised Statutes, is amended to read as follows:

**“§456-6 Liabilities [on]; limitations on; official bond.** (a) In the performance of a notarial act, a notary’s liability shall be limited to a failure by the notary to perform properly the actions required for the jurat, acknowledgment, or other notarial act. The notary’s liability shall not be based on statements in a notarized document apart from the notarial certificate.

(b) For the official misconduct or neglect of a notary public or breach of any of the conditions of the notary’s official bond, the notary and the surety on the notary’s official bond shall be liable to the party injured thereby for all the damages sustained. The party shall have a right of action in the party’s own name upon the bond and may prosecute the action to final judgment and execution.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

A Bill for an Act Relating to County Civil Fines.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 46-1.5, Hawaii Revised Statutes, is amended to read as follows:

**“§46-1.5 General powers and limitation of the counties.** Subject to general law, each county shall have the following powers and shall be subject to the following liabilities and limitations:

- (1) Each county shall have the power to frame and adopt a charter for its own self-government, which shall establish the county executive, administrative, and legislative structure and organization, including, but not limited to, the method of appointment or election of officials, their duties, responsibilities, and compensation, and the terms of their office.
- (2) Each county shall have the power to provide for and regulate the marking and lighting of all buildings and other structures that may be obstructions or hazards to aerial navigation, so far as may be necessary or proper for the protection and safeguarding of life, health, and property.
- (3) Each county shall have the power to enforce all claims on behalf of the county and approve all lawful claims against the county, but shall be prohibited from entering into, granting, or making in any manner any contract, authorization, allowance payment, or liability contrary to the provisions of any county charter or general law.
- (4) Each county shall have the power to make contracts and to do all things necessary and proper to carry into execution all powers vested in the county or any county officer.
- (5) Each county shall have the power to maintain channels, whether natural or artificial, including their exits to the ocean, in suitable condition to carry off storm waters; and to remove from the channels, and from the shores and beaches, any debris that is likely to create an unsanitary condition or become a public nuisance; provided that, to the extent any of the foregoing work is a private responsibility, the responsibility may be enforced by the county in lieu of the work being done at public expense. Counties also shall have the power to construct, acquire by gift, purchase, or by the exercise of eminent domain, reconstruct, improve, better, extend, and maintain projects or undertakings for the control of and protection against floods and flood waters, including the power to drain and rehabilitate lands already flooded, and to enact zoning ordinances providing that lands deemed subject to seasonable, periodic, or occasional flooding shall not be used for residence or other purposes in a manner as to endanger the health or safety of the occupants thereof, as required by the Federal Flood Insurance Act of 1956 (chapter 1025, Public Law 1016).
- (6) Each county shall have the power to exercise the power of condemnation by eminent domain when it is in the public interest to do so.
- (7) Each county shall have the power to exercise regulatory powers over business activity as are assigned to them by chapter 445 or other general law.
- (8) Each county shall have the power to fix the fees and charges for all official services not otherwise provided for.

- (9) Each county shall have the power to provide by ordinance for the improvement or maintenance assessments of districts within the county.
- (10) Except as otherwise provided, no county shall have the power to give or loan credit to, or in aid of, any person or corporation, directly or indirectly, except for a public purpose.
- (11) Where not within the jurisdiction of the public utilities commission, each county shall have the power to regulate by ordinance the operation of motor vehicle common carriers transporting passengers within the county and adopt and amend rules the county deems necessary for the public convenience and necessity.
- (12) Each county shall have the power to enact and enforce ordinances necessary to prevent or summarily remove public nuisances and to compel the clearing or removal of any public nuisance, refuse, and uncultivated undergrowth from streets, sidewalks, public places, and unoccupied lots, and in these connections, to impose and enforce liens upon the property for the cost to the county of removing and completing the necessary work where the owners fail, after reasonable notice, to comply with the ordinances. The authority provided by this paragraph shall not be self-executing, but shall become fully effective within a county only upon the enactment or adoption by the county of appropriate and particular laws, ordinances, or rules defining "public nuisances" with respect to each county's respective circumstances. The counties shall provide the property owner with the opportunity to contest the summary action and to recover the owner's property.
- (13) Each county shall have the power to enact ordinances deemed necessary to protect health, life, and property, and to preserve the order and security of the county and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute, provided also that the statute does not disclose an express or implied intent that the statute shall be exclusive or uniform throughout the State.
- (14) Each county shall have the power to make and enforce within the limits of the county all necessary ordinances covering: all local police matters; all matters of sanitation; all matters of inspection of buildings; all matters of condemnation of unsafe structures, plumbing, sewers, dairies, milk, fish, and morgues; all matters of the collection and disposition of rubbish and garbage; and to provide exemptions for homeless facilities and any other program for the homeless authorized by chapter 358D, for all matters under this paragraph; and to appoint county physicians and sanitary and other inspectors as necessary to carry into effect ordinances made under this paragraph, who shall have the same power as given by law to agents of the department of health, subject only to limitations placed on them by the terms and conditions of their appointments; and to fix a penalty for the violation of any ordinance, which penalty may be a misdemeanor, petty misdemeanor, or violation as defined by general law.
- (15) Each county shall have the power to provide public pounds, to regulate the impounding of stray animals and fowl, and their disposition, and to provide for the appointment, powers, duties, and fees of animal control officers.
- (16) Each county shall have the power to purchase and otherwise acquire, lease, and hold real and personal property within the defined boundaries of the county and to dispose of the real and personal property as

the interests of the inhabitants of the county may require, except that: any property held for school purposes may not be disposed of without the consent of the superintendent of education; no property bordering the ocean shall be sold or otherwise disposed of; and all proceeds from the sale of park lands shall be expended only for the acquisition of property for park or recreational purposes.

- (17) Each county shall have the power to provide by charter for the prosecution of all offenses and to prosecute for offenses against the laws of the State under the authority of the attorney general of the State.
- (18) Each county shall have the power to make appropriations in amounts deemed appropriate from any moneys in the treasury, for the purpose of community promotion and public celebrations, the entertainment of distinguished persons as may from time to time visit the county, for the entertainment of other distinguished persons as well as public officials when deemed to be in the best interest of the community, and the rendering of civic tribute to individuals who, by virtue of their accomplishments and community service, merit civic commendations, recognition, or remembrance.
- (19) Each county shall have the power to:
  - (A) Construct, purchase, take on lease, lease, sublease, or in any other manner acquire, manage, maintain, or dispose of buildings for county purposes, sewers, sewer systems, pumping stations, waterworks, including reservoirs, wells, pipelines, and other conduits for distributing water to the public, lighting plants, and apparatus and appliances for lighting streets and public buildings and manage, regulate, and control the same;
  - (B) Regulate and control the location and quality of all appliances necessary to the furnishing of water, heat, light, power, telephonic, and telegraphic service to the county;
  - (C) Acquire, regulate, and control any and all appliances for the sprinkling and cleaning of the streets and the public ways and for flushing the sewers; and
  - (D) Open, close, construct, or maintain county highways or charge toll on county highways; provided that all revenues received from a toll charge shall be used for the construction or maintenance of county highways.
- (20) Each county shall have the power to regulate the renting, subletting, and rental conditions of property for places of abode by ordinance.
- (21) Unless otherwise provided by law, each county shall have the power to establish by ordinance the order of succession of county officials in the event of a military or civil disaster.
- (22) Each county shall have the power to sue and be sued in its corporate name.
- (23) Each county shall have the power to establish and maintain waterworks and sewer works; to collect rates for water supplied to consumers and for the use of sewers; to install water meters whenever deemed expedient; provided that owners of premises having vested water rights under existing laws appurtenant to the premises shall not be charged for the installation or use of the water meters on the premises; to take over from the State existing waterworks systems, including water rights, pipelines, and other appurtenances belonging thereto, and sewer systems, and to enlarge, develop, and improve the same.
- (24) (A) Each county may impose civil fines, in addition to criminal penalties, for any violation of county ordinances or rules after

reasonable notice and requests to correct or cease the violation have been made upon the violator. Any administratively imposed civil fine [may be administratively imposed] shall not be collected until after an opportunity for a hearing under chapter 91. Any appeal shall be filed within thirty days from the date of the final written decision. [Such a proceeding] These proceedings shall not be a prerequisite for any civil fine or injunctive relief ordered by the circuit court.

- (B) Each county by ordinance may provide for the addition of any unpaid civil fines, ordered by any court of competent jurisdiction, to any taxes, fees, or charges, with the exception of fees or charges for water for residential use and sewer charges collected by the county. Each county by ordinance may also provide for the addition of any unpaid administratively imposed civil fines, which remain due after all judicial review rights under section 91-14 are exhausted, to any taxes, fees, or charges, with the exception of water for residential use and sewer charges, collected by the county. The ordinance shall specify the administrative procedures for the addition of the unpaid civil fines to the eligible taxes, fees, or charges and may require hearings or other proceedings. After the unpaid civil fines are added to the taxes, fees, or charges as specified by county ordinance, the unpaid civil fines shall be deemed immediately due, owing and delinquent and may be collected in the same manner as the taxes, fees, or charges. The procedure for collection of unpaid civil fines authorized in this paragraph shall be in addition to any other procedures for collection available to the State and county by law or rules of the courts.
- (C) Each county may impose civil fines upon any person who places graffiti on any real or personal property owned, managed, or maintained by the county. The fine may be up to \$1,000 or may be equal to the actual cost of having the damaged property repaired or replaced. The parent or guardian having custody of a minor who places graffiti on any real or personal property owned, managed, or maintained by the county shall be jointly and severally liable with the minor for any civil fines imposed hereunder. Any such fine may be administratively imposed after an opportunity for a hearing under chapter 91, but such a proceeding shall not be a prerequisite for any civil fine ordered by any court.

As used in this subparagraph, "graffiti" means any unauthorized drawing, inscription, figure, or mark of any type intentionally created by paint, ink, chalk, dye, or similar substances.

- (D) At the completion of an appeal in which the county's enforcement action is affirmed and upon correction of the violation if requested by the violator, the case will be reviewed by the county agency that imposed the civil fines to determine the appropriateness of the amount of the civil fines that accrued while the appeal proceedings were pending. In its review of the amount of the accrued fines, the county agency may consider the following: nature and egregiousness of the violation, duration of the violation, number of recurring and other similar violations, effort taken by the violator to correct the violation, degree of involvement in causing or continuing the violation, reasons for any delay in the completion of the appeal, and other extenuating circum-

stances. The civil fine which is imposed by administrative order after this review is completed and the violation is corrected is subject to only judicial review, notwithstanding any provisions for administrative review in county charters.

- (E) After completion of a review of the amount of accrued civil fine by the county agency which imposed the fine, the amount of the civil fine determined appropriate, including both the initial civil fine and any accrued daily civil fine, shall immediately become due and collectible following reasonable notice to the violator. If no review of the accrued civil fine is requested, the amount of the civil fine, not to exceed the total accrual of civil fine prior to correcting the violation, shall immediately become due and collectible following reasonable notice to the violator, at the completion of all appeal proceedings.
  - (F) If no county agency exists to conduct appeal proceedings for a particular civil fine action taken by the county, then one shall be established by ordinance before the county shall impose that civil fine.
- (25) Any law to the contrary notwithstanding, any county mayor may exempt by executive order donors, provider agencies, homeless facilities, and any other program for the homeless under chapter 358D from real property taxes, water and sewer development fees, rates collected for water supplied to consumers and for use of sewers, and any other county taxes, charges, or fees; provided that any county may enact ordinances to regulate and grant the exemptions granted by this paragraph.”

SECTION 2. Act 168, Session Laws of Hawaii 1993, as amended by Act 171, Session Laws of Hawaii 1994, is amended by amending section 5, to read as follows:

“SECTION 5. This Act shall take effect upon<sup>1</sup> approval; provided that on June 30, 1996, section 46-1.5(24)(B), Hawaii Revised Statutes, shall be repealed and the subparagraph designation for section 46-1.5(24)(A) shall be repealed].”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored

SECTION 4. This Act shall take effect on July 1, 1996; provided that Section 2 shall take effect on June 29, 1996.

(Approved April 22, 1996.)

**Note**

- 1. Prior to amendment “its” appeared here.

**ACT 20**

H.B. NO. 3151

A Bill for an Act Relating to Motor Vehicle Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:10C-117, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:



- “(a) (1) Any person subject to this article in the capacity of the operator, owner, or registrant of a motor vehicle in this State, or registered in this State, who violates any applicable provision of this article, shall be subject to citation for the violation by any county police department in a form and manner approved by the violations bureau of the district court of the first circuit.
- (2) Notwithstanding any provision of the Hawaii Penal Code:
- (A) Each violation shall be deemed a separate offense and shall be subject to a fine of not less than \$100 nor more than \$5,000 which shall not be suspended except as provided in subparagraph (B);
  - (B) If the person is convicted of not having had a no-fault policy in effect at the time the citation was issued, the fine shall be \$500 for the first offense and a minimum of \$1,500 for each subsequent offense[;] that occurs within a five-year period from any prior conviction; provided that the judge [shall]:
    - (i) Shall have the discretion to suspend the fine for the first offense; provided further that upon the defendant’s request, the judge may grant community service in lieu of the fine, of not less than [75] seventy-five hours and not more than [100] one hundred hours for the first offense, and not less than [200] two hundred hours nor more than [275] two hundred seventy-five hours for the second offense; and [provided further that the judge may]
    - (ii) May grant community service in lieu of the fine for subsequent offenses at the judge’s discretion.
- (3) In addition to the fine in [[ ]paragraph (2)[ ]], [if any person operates a motor vehicle without a valid no-fault policy in effect insuring the driver or registered owner, or both,] for the first conviction within a five-year period for the offense of driving without no-fault policy, the court shall either:
- (A) suspend the driver’s license of the driver [and] or of the registered owner [shall be suspended] for three months, provided that they shall not be required to obtain proof of financial responsibility pursuant to section 287-20, or
  - (B) [they shall be required] require the driver or the registered owner to [maintain<sup>1</sup> proof of financial responsibility pursuant to section [287-21(2), (3), or (4) and] keep a nonrefundable no-fault insurance policy in force for six months[;]. [provided that if]
- In addition to the fine in paragraph (2), if the violation is a subsequent offense of driving without a valid no-fault policy, within a five-year period of any prior conviction, the driver’s licenses of the driver [and] or the registered owner shall be suspended for one year and the driver or the registered owner shall be required to maintain proof of financial responsibility pursuant to section 287-20.[; and provided further that any]
- (4) Any person cited under this section shall have an opportunity to present a good faith defense, including but not limited to lack of knowledge or proof of insurance. The general penalty provision of this section shall not apply to:
- (A) Any operator of a motor vehicle owned by another person if the operator’s own insurance covers such driving; or
  - (B) Any operator of a motor vehicle owned by that person’s employer during the normal scope of that person’s employment; or

- (C) Any operator of a borrowed motor vehicle if the operator holds a reasonable belief that the subject vehicle is insured.
- [(4)] (5) In the case of multiple [violations] convictions for driving without a valid no-fault policy within a five-year period from any prior conviction, the court, in addition to any other penalty, shall impose the following penalties:
- (A) Imprisonment of not more than thirty days;
  - (B) Suspension or revocation of the motor vehicle registration plates of the vehicle involved;
  - (C) Impoundment, or impoundment and sale, of the motor vehicle for the costs of storage and other charges incident to seizure of the vehicle, or any other cost involved pursuant to section 431:10C-301; or
  - (D) Any combination of those penalties.”

SECTION 2. Section 287-20,<sup>1</sup> Hawaii Revised Statutes, is amended to read as follows:

“(a) Whenever a driver’s license has been suspended or revoked:

- (1) Pursuant to part XIV of chapter 286 except as provided in section 291-4(f), [or]
- (2) Upon a conviction of any offense pursuant to law[.]; or[.]
- (3) In the case of minors, [suspended or revoked] pursuant to part V of chapter 571,

the license shall not at any time thereafter be issued to the person whose license has been suspended or revoked, nor shall the person thereafter operate a motor vehicle, unless and until the person has furnished and thereafter maintains proof of financial responsibility; provided that this section shall not apply to any conviction of a moving violation, [or] any administrative license suspension pursuant to chapter 291A, or the first conviction within a five-year period for driving without a valid no-fault policy.

(b) Whenever by reason of a conviction of, or adjudication under part V of chapter 571 by reason of, any of the offenses listed in this [section] subsection, under the laws of the State or ordinances of any political subdivision, a court of competent jurisdiction has discretion to revoke or suspend a driver’s license but does not revoke or suspend the license, the administrator shall nevertheless after the expiration of thirty days from the date of conviction or adjudication suspend the license and shall keep the same suspended, and the person so convicted or adjudicated shall not thereafter operate a motor vehicle, unless and until the person so convicted or adjudicated furnishes and thereafter maintains proof of financial responsibility. The offenses referred to are:

- (1) Reckless or inattentive driving, driving while under the influence of intoxicating liquor, driving while under the influence of drugs, and driving while that person’s license has been suspended or revoked[; and], except when a person’s license has been suspended or revoked for the first conviction of driving without a no-fault insurance policy;
- (2) Conviction or adjudication under part V of chapter 571 by reason of any moving violation offense involving a motor vehicle if the motor vehicle is in any manner involved in an accident in which any person is killed or injured, or in which damage to property results to an apparent extent in excess of \$1,000 and there are reasonable grounds for the administrator to believe that the defendant is at fault[.], and
- (3) Driving without a valid no-fault policy if the conviction occurs within a five-year period from any prior conviction.

[(b)] (c) If any person, at any time of conviction of, or adjudication under part V of chapter 571 by reason of, any of the offenses [in subsection (a)] in this section, does not hold a valid driver's license, no license shall at any time thereafter be issued to the person unless and until the person furnishes and thereafter maintains proof of financial responsibility[.], unless otherwise specified in this section."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

Note

1. So in original.

ACT 21

H.B. NO. 3227

A Bill for an Act Related to Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:9-214, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) The commissioner may prescribe and furnish special forms calling for [such] any information [as] that the commissioner deems proper in connection with the application for or extension of [such] these licenses.

(c) The commissioner may issue:

- (1) A limited license to each individual who has charge of vending machines used in this State for the effectuation of [such] travel insurance;
- (2) A limited license to any individual who sells policies of accident and sickness insurance as a promotional device to improve the circulation of a newspaper in this State; [or]
- (3) A limited license to creditors for the purposes of enrolling debtors under a group credit life insurance or group credit disability insurance policy, issuing certificates of insurance pursuant thereto, or issuing individual credit life insurance or credit disability insurance policies to debtors[.]; or
- (4) A limited credit insurance license to any individual who sells policies of individual or group credit life, credit accident and health, credit involuntary unemployment, or credit property insurance provided the individual satisfactorily passes a prelicensing examination that is limited to the kinds of insurances marketed through creditors."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

A Bill for an Act Relating to the Penal Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 708A-2, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "specified unlawful activity" to read:

""Specified unlawful activity" means any act, or series of acts, that:

- (1) Constitutes a felony under the laws of this State;
- (2) If occurring outside this State, may be punishable by confinement for more than one year under the laws of the [state] jurisdiction in which the act occurred;
- (3) Involves an act or acts constituting the [offenses] offense of gambling, criminal property damage, extortion, theft, or prostitution[,], or a drug offense under chapters 329, 329C, or part IV of chapter 712[,], or any firearm offense; or
- (4) If occurring outside this State, would constitute the [offenses] offense of gambling, criminal property damage, extortion, theft, or prostitution[,], or a drug offense under chapters 329, 329C, or part IV of chapter 712[,], or any firearm offense under the laws of this State."

2. By amending the definition of "unlawful activity" to read:

""Unlawful activity" means any act that is chargeable or indictable as an offense of any degree or class under the laws of this State or under federal law or, if the act occurred in a [state] jurisdiction other than this State, would be chargeable or indictable as an offense of any degree or class under the laws of this State or under federal law."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

A Bill for an Act Relating to Agriculture.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 155-1, Hawaii Revised Statutes, is amended by amending the definition of "qualified farmer" to read as follows:

- ""(2) "Qualified farmer" means a person of proven farming ability who operates the person's own farm on land owned by the person in fee or on land rented or leased from others and who is presently devoting, has recently devoted, or intends to devote [at least one-third] most of the person's time or [derive at least one-third] who derives a major portion of the person's net cash income from direct participation in farming in its broadest sense. It includes Hawaii partnerships controlled to the extent of seventy-five per cent by persons who would qualify individually and would meet the eligibility requirements of section 155-10. It

also includes small corporations where at least seventy-five per cent of each class of stock issued by the corporation is owned by persons who qualify individually and would meet the eligibility requirements of section 155-10 and where seventy-five per cent of the directors are qualified farmers. It also includes corporations incorporated in the State primarily for agricultural production purposes; actively engaged in agricultural production for a minimum of two years; and with at least seventy-five per cent of each class of stock owned by residents of this State.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

## ACT 24

H.B. NO. 3346

A Bill for an Act Relating to Recordation of Instruments in the Bureau of Conveyances or Land Court.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### “CHAPTER NONCONSENSUAL COMMON LAW LIENS

§ -1 **Findings and purpose.** The legislature finds that there is a problem with the recording at the land court or the bureau of conveyances of invalid instruments which purport to affect the property interests of various persons, including but not limited to government officers and employees. These instruments, which have no basis in fact or law, have a seriously disruptive effect on property interests and title. They appear on title searches and other disclosures based on public records, and are costly and time-consuming to expunge. When they so appear, they may obstruct a property owner’s ability to transfer title or obtain title insurance and financing.

The bureau of conveyances does not have the discretionary authority to refuse to record instruments so long as those instruments comply with certain minimal format requirements. It would be inefficient and require substantial governmental expenditures to have the bureau of conveyances determine the legal sufficiency of instruments submitted for recordation. The land court’s registrar screens instruments submitted for recordation, but has no mechanism to prevent the filing of frivolous lien claims during the pendency of litigation.

The legislature finds that it is necessary and in the best interests of the State and private parties to legislatively provide a means to relieve this problem, and to limit the circumstances in which nonconsensual common law liens shall be recognized in this State.

§ -2 **Definitions.** As used in this chapter:

“Court” means any court described in the laws of the United States or any state.

“Federal official or employee” means an employee of the federal government as defined for purposes of the federal tort claims act, 28 U.S.C. Sec. 2671.

“Frivolous” means without any basis in law or fact.

“Lien” means a recorded encumbrance on property.

“Lien claimant” means the purported lien holder.

“Nonconsensual common law lien” means a lien that:

- (1) Is not provided for by a specific statute;
- (2) Does not depend upon the consent of the owner of the property affected for its existence; and
- (3) Is not a court-imposed equitable or constructive lien.

“Registrar” means the registrar of the land court or the bureau of conveyances.

“State or local officer or employee” means an appointed or elected officer or employee of a state or county department, agency, board, authority, or commission.

§ -3 **Scope of chapter.** Nothing in this chapter is intended to affect:

- (1) Any lien provided for by statute;
- (2) Any consensual liens now or hereafter recognized under the common law of this State; or
- (3) The ability of courts to impose equitable or constructive liens.

§ -4 **Contesting validity of recorded instruments.** (a) Any person whose real or personal property is subject to a recorded claim of nonconsensual common law lien, who believes the claim of lien is invalid, may file a petition to commence a proceeding in the appropriate circuit court to contest the validity of that instrument. The petition shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or the petitioner’s attorney setting forth a concise statement of the facts upon which the petition is based.

(b) Subsection (a) shall not apply to any instrument that is recorded by the United States, the State, or any county.

(c) In any action brought under subsection (a), the court may rule without a hearing, on the basis of the affidavits submitted by the parties, unless one of the parties establishes a genuine issue of material fact.

(d) If the court finds that the petition raises a genuine issue of material fact, it shall issue an order, which may be granted ex parte, directing the lien claimant to appear before the court at a time no earlier than six nor later than twenty-one days following the order, and show cause, if any, why the claim of lien should not be stricken and other relief granted. The order shall clearly state that if the lien claimant fails to appear at the time and place stated, the claim of lien shall be stricken and released and the lien claimant shall be ordered to pay actual damages, costs, and reasonable attorneys’ fees. The order shall further state that if the court finds the lien to be frivolous, the court may order the lien claimant to pay either actual damages or \$5,000, whichever is greater.

§ -5 **Liens against public officers and employees.** Any claim of lien against a federal, state, or county officer or employee based on the performance or nonperformance of that officer’s or employee’s duties shall be invalid unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien or unless a specific statute authorizes the filing of such lien.

§ -6 **Filing a notice of invalid lien.** If a claim of lien as described in section -5 has been accepted for filing, the registrar shall accept for filing a notice of invalid lien signed and submitted by the assistant United States attorney representing the federal agency of which the individual is an official or employee, or the attorney representing the state or county department, agency, board, authority, or commission of which the individual is an officer or employee. A copy of the notice of invalid lien shall be mailed by the government attorney to the lien claimant at his or her last known address. The registrar or registrar's assistants shall not be liable for accepting for filing either a claim of lien as described in section -5 or a notice of invalid lien pursuant to this section.

§ -7 **Expungement of invalid lien; penalties; sanctions for frivolous filings.** (a) If the circuit court finds the purported lien invalid, it shall order the registrar to expunge the instrument purporting to create it, and order the lien claimant to pay actual damages, costs of suit, and reasonable attorneys' fees. This order shall be presented to the registrar for recordation. If the circuit court finds the purported lien is frivolous, the prevailing party in any action brought under section -4 shall be awarded costs of suit, reasonable attorneys' fees, and either actual damages or \$5,000, whichever is greater.

(b) If any person submits or is responsible for submitting an instrument for recordation which is frivolous, as determined by the court, more than two times in a calendar year, upon application of either the person aggrieved, the registrar, or the government counsel representing the government officer or employee affected by the lien, the appropriate circuit court may issue an order to the registrar directing the registrar not to record during the next five years any further instruments submitted for recordation by that person, unless that person obtains leave of court to file another instrument. This order may be presented to the registrar for recordation. This subsection shall not preclude a person from proceeding under section -4 and recovering damages, penalties, costs, and attorneys' fees.

(c) Nothing in this chapter shall inhibit or preclude any person from seeking any other common law, statutory, or other equitable remedy."

SECTION 3.<sup>1</sup> This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4.<sup>1</sup> This Act shall take effect upon its approval.

(Approved April 22, 1996.)

**Note**

1. So in original.

**ACT 25**

H.B. NO. 3351

A Bill for an Act Relating to Child Support Enforcement.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 571-52.2, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) For each payment made pursuant to an assignment order, the person making such payment may deduct and retain as an administrative fee the additional

amount of \$2 from the income owed to the obligor. The total amount withheld from the obligor's income including the administrative fee may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. § 1673(b)).<sup>1</sup> Any assignment made pursuant to an assignment order shall have priority as against any garnishment, attachment, execution, or other assignment order, or any other order [unless otherwise ordered by the court]<sup>1</sup> and the same shall not be subject to any of the exemptions or restrictions contained in part III of chapter 651, and chapters 652 and 653.

For purposes of this section, delinquencies in payments shall be computed on the basis of the moneys owed and unpaid on the date that the obligor under the support order has been given notice pursuant to law of the application for the order of assignment, and the fact that the obligor may have subsequently paid such delinquencies shall not relieve the court or the child support enforcement agency of its duty under this subsection to order the assignment."

SECTION 2. Section 576D-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) The agency shall:
- (1) Establish a state parent locator service for the purpose of locating absent and custodial parents;
  - (2) Cooperate with other states in:
    - (A) Establishing paternity, if necessary;
    - (B) Locating an absent parent who is present in the State and against whom any action is being taken under a Title IV-D program in any other state; and
    - (C) Securing compliance by such an absent parent with a support order issued by a court of competent jurisdiction in another state;
  - (3) Perform periodic checks of whether a parent is collecting unemployment compensation and, if so, to arrange, either through agreement with the parent or by bringing legal process, to have a portion of the compensation withheld, to fulfill the parent's child support obligations;
  - (4) Notify annually each custodial parent, guardian, protective payee, or other person having custody of the child of an Aid to Families with Dependent Children family of the amount of child support collected on behalf of the child in the family. For the purpose of this section, “Aid to Families with Dependent Children family” means a family which receives financial assistance under the federal Aid to Families with Dependent Children program;
  - (5) Establish and utilize procedures which shall require a debtor parent to give security, post bond, or give some other guarantee to secure payment of delinquent child support. The procedures shall apply to all debtor parents of children described under section 576D-3. The procedures shall include advance notice to the debtor parent in full compliance with the State's procedural due process requirements. The agency shall develop guidelines, which are available to the public, to determine whether the case is inappropriate for application of this requirement;
  - (6) Establish and utilize procedures by which information regarding the amount of delinquent child support owed by a debtor parent residing in the State will be made available to any consumer reporting agency. The procedures shall be effectuated upon the agency being authorized to provide Title IV-D services, and shall include provisions on advance notice to the debtor parent whose information is being reported of the procedures, which shall be in full compliance with the State's proce-



dural due process requirements, to contest the accuracy of the information[. The agency may require payment of a reasonable fee by any consumer reporting agency that requests information on the account status of a child support obligor, provided that all fees collected shall be deposited to the general fund];

- (7) Establish and utilize procedures which will enforce liens against the real and personal property of a debtor parent who owes overdue support and who resides or owns property in the State. The agency shall further establish guidelines which are available to the public to determine whether the case is inappropriate for application of this paragraph;
- (8) Establish and utilize procedures for the notification of a custodial parent that any income tax refund setoff under section 231-53 shall be credited to child support debts for past public assistance or foster care maintenance before any other debt;
- (9) Establish and utilize procedures for prompt reimbursements of overpayments of child support debts from income tax refund setoffs under section 231-53. The procedures shall provide for the reimbursements to be made by the custodial parent or agency;
- (10) Establish and utilize procedures for periodic review and modification of child support orders in accordance with Title IV-D; and
- (11) Perform other duties required under Title IV-D.”

SECTION 3. Section 576E-16, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Compliance by an employer with the income withholding order shall operate as a discharge of the employer’s liability to the responsible parent for that portion of the responsible parent’s earnings withheld and transmitted to the agency, whether or not the employer has withheld the correct amount. For each payment made pursuant to an income withholding order, the employer may deduct and retain as an administrative fee an additional amount of \$2 from the income owed to the responsible parent. The total amount withheld from the obligor’s income, including the administrative fee, may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. § 1673(b)). Any income withholding order shall have priority as against any garnishment, attachment, execution, or other income withholding order, or any other order, and shall not be subject to the exemptions or restrictions contained in part III of chapter 651 and in chapters 652 and 653. An employer who fails to comply with an income withholding order under this section shall be liable to the obligee or the agency for the full amount of all sums ordered to be withheld and transmitted. An employer receiving an income withholding order shall transmit amounts withheld to the agency within five working days after the responsible parent is paid. The employer shall begin withholding no later than the first pay period commencing within fourteen days following the date a copy is mailed to the employer. An employer who is required to withhold amounts from the income of more than one employee may remit to the agency a sum total of all such amounts in one check with a listing of the amounts applicable to each employee. Within five working days after receipt of the amounts withheld by the employer, the agency shall disburse the amounts to the obligee for the benefit of the child.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

## ACT 26

SECTION 5. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

### Note

1. So in original.

## ACT 26

H.B. NO. 3394

A Bill for an Act Relating to Business Development Corporations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 420-10, Hawaii Revised Statutes, is amended to read as follows:

**“§420-10 Articles; amendments.** The articles may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and the amendments shall require approval of the affirmative vote of two-thirds of the votes to which the stockholders are entitled and two-thirds of the votes to which the members are entitled; provided that no amendment of the articles which is inconsistent with the general purposes expressed herein or which authorizes any additional class of capital stock to be issued[, or which eliminates or curtails the right of the director of commerce and consumer affairs to examine the corporation or the obligation of the corporation to make reports as provided in section 420-14,] shall be made without amendment of this chapter; and provided further that no amendment of the articles which increases the obligation of a member to make loans to the corporation, or makes any change in the principal amount, interest rate, maturity date, or in the security or credit position, of any outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership as provided in section 420-8, or affects a member's voting rights as provided in section 420-9, shall be made without the consent of each member affected by the amendment.

[Within thirty days after any meeting at which amendment of the articles has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth the amendment and the due adoption thereof, shall be submitted to the commissioner of financial institutions, who shall examine them and if the commissioner finds that they conform to the requirements of this chapter, shall so certify and endorse the commissioner's approval thereon. Thereupon, the] The articles of amendment shall be delivered to and filed [in the office of the commissioner] by the director of commerce and consumer affairs and no amendment shall take effect until the articles of amendment have been filed.”

SECTION 2. Section 420-17, Hawaii Revised Statutes, is amended to read as follows:

**“§420-17 Limitation on effect of chapter.** If a corporation organized pursuant to this chapter fails to begin business within two years from the effective date of its articles, then the articles shall become void. [If no corporation is organized by June 30, 1968, pursuant to this chapter, then this chapter shall become void.]”

SECTION 3. Section 420-14, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 27**

H.B. NO. 3396

A Bill for an Act Relating to Escrow Depositories.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding to article 20 a new section to be appropriately designated and to read as follows:

**“§431:20- Escrow depositories.** Any title insurer or insurer which operates as an escrow depository as defined in chapter 449 shall be licensed in accordance with chapter 449.”

SECTION 2. Section 449-3, Hawaii Revised Statutes, is amended to read as follows:

**“§449-3 Excepted from this chapter.** This chapter does not apply to any of the following when acting as escrow depositories:

- (1) Banks, trust companies, and savings and loan associations, [and insurance companies,] authorized under any law of this State or of the United States to do business in the State;
- (2) Any person licensed as a real estate broker in the State who is the broker for a party to the escrow, provided the person does not charge any escrow fee; and
- (3) Any person licensed to practice law in the State who, in escrow, is not acting as the employee of a corporation, provided the person does not charge any escrow fee.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Medicare Supplement Insurance Policies.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:10A-301, Hawaii Revised Statutes, is amended by amending the definition of “medicare supplement policy” to read as follows:

““Medicare supplement policy” means a group or individual policy of accident and sickness insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations, other than a policy issued pursuant to a contract under section 1876 [or section 1833] of the federal Social Security Act (42 U.S.C. section 1395 et seq.), or an issued policy under a demonstration project [authorized pursuant to amendments to the federal Social Security Act,] specified in 42 U.S.C. section 1395ss(g)(1), which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare.”

SECTION 2. Section 431:10A-302, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) [This part shall not] Except as otherwise specifically provided in section 431:10A-307(d), this part is not intended to prohibit or apply to insurance policies or health care benefit plans including group conversion policies, issued to medicare eligible persons that are not marketed or held to be medicare supplement policies or benefit plans.”

SECTION 3. Section 431:10A-305, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commissioner may adopt from time to time, reasonable rules as are necessary to conform medicare supplement policies and certificates to the requirements of federal law and regulations adopted thereunder, including but not limited to:

- (1) Requiring refunds or credits if the policies or certificates do not meet loss ratio requirements;
- (2) Establishing a uniform methodology for calculating and reporting loss ratios;
- (3) Assuring public access to policies, premiums, and loss ratio information of issuers of medicare supplement insurance;
- (4) Establishing a process for approving or disapproving policy forms and certificate forms and proposed premium increases; [and]
- (5) Establishing a policy for holding public hearings prior to approval of premium increases[.]; and
- (6) Establishing standards for medicare select policies and certificates.”

SECTION 4. Section 431:10A-306, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10A-306 Loss ratio standards.** Medicare supplement policies shall return to policyholders benefits which are reasonable in relation to the premium charged. The commissioner shall adopt reasonable rules to establish minimum standards for loss ratios of medicare supplement policies on the basis of incurred

claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums in accordance with accepted actuarial principles and practices. For the purposes of rules adopted under this section, group medicare supplement policies and certificates issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be regarded as group policies.”

SECTION 5. Section 431:10A-307, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The commissioner may adopt reasonable rules for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not medicare supplement coverages, for all accident and sickness insurance policies sold to persons eligible for medicare [by reason of age], other than:

- (1) Medicare supplement policies; or
- (2) Disability income policies[;
- (3) Basic, catastrophic, or major medical expense policies; or
- (4) Single premium, nonrenewable policies].”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

## ACT 29

H.B. NO. 3412

A Bill for an Act Relating to Motor Vehicle Repairs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 437B-25, Hawaii Revised Statutes, is repealed.

SECTION 2. Statutory material to be repealed is bracketed.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 30

H.B. NO. 3413

A Bill for an Act Relating to Injunctions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 603-23, Hawaii Revised Statutes, is amended to read as follows:

## ACT 31

**“§603-23 Injunction of violation of laws and ordinances.** The circuit courts shall have power to enjoin or prohibit any violation of the laws of the State, or of the ordinances of the various counties, upon application of the attorney general, the director of [the office of consumer protection,] commerce and consumer affairs, or the various county attorneys, corporation counsels, or prosecuting attorneys, even if a criminal penalty is provided for violation of the laws or ordinances. Nothing herein limits the powers elsewhere conferred on circuit courts.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

## ACT 31

H.B. NO. 3416

A Bill for an Act Relating to Citations for Unlicensed Activity.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 253, Session Laws of Hawaii 1993, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect upon its approval [and shall be repealed on June 30, 1996].”

SECTION 2. Statutory material to be repealed is bracketed.

SECTION 3. This Act shall take effect on June 29, 1996.

(Approved April 22, 1996.)

## ACT 32

H.B. NO. 3430

A Bill for an Act Relating to Solicitors.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Part VIII of chapter 445, Hawaii Revised Statutes, is repealed.

SECTION 2. Chapter 468, Hawaii Revised Statutes, is repealed.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

ACT 33

H.B. NO. 3460

A Bill for an Act Relating to Foster Parents.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 346-10, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The identity of foster parents, adoptive parents, and foster care facility staff parents, and the location of the foster home, adoptive home, or foster care facility is confidential but may be released with the consent of the foster parent, adoptive parent, or foster care facility staff. If the department determines it is in the best interest of the child and of the adoptive parents, foster parents, or facility, the identity and location of the adoptive parents or foster parents, foster home, or facility may be stricken from the individual’s case file or withheld from the child’s parents, guardians, or other interested persons. Notwithstanding the above, the department shall release the identity, mailing address, and telephone number of licensed or certified foster parents and approved relative caregivers to any association, agency, or government entity which would be of benefit to the foster parents or relative caregivers or to the foster care program, unless the foster parents or relative caregivers submit to the department a signed statement requesting that such information be kept confidential. To be effective, this statement must be submitted to the department by December 31, 1996, or with the application to the department thereafter. The identity, mailing address, and telephone number of licensed or certified foster parents and approved relative caregivers provided to an association, agency, or government entity shall not be released by the association, agency, or government entity without the consent of the foster parent or relative caregiver.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

ACT 34

H.B. NO. 3468

A Bill for an Act Relating to Unassembled Examinations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 76-22, Hawaii Revised Statutes, is repealed.

SECTION 2. Statutory material to be repealed is bracketed.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Examination Consultants.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 76-15, Hawaii Revised Statutes, is amended to read as follows:

**“§76-15 Examination consultants.** The director of human resources development may select officers or employees in the state service or any individual to act as volunteer subject-matter consultants in the preparation and rating of applications and examinations. Notwithstanding the provisions of chapter 92F, the identity of any volunteer subject matter consultant, and any information which would result in actual identification of any volunteer subject matter consultant, are confidential and shall not be disclosed, unless deemed appropriate by the director. An appointing authority may excuse any officer or employee in the appointing authority’s department from the officer’s or employee’s regular duties for the time required for the officer’s or employee’s work as a volunteer subject-matter consultant.

Officers and employees shall not be entitled to extra pay for services as volunteer consultants but shall be entitled to reimbursement for necessary traveling and other expenses.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

A Bill for an Act Relating to Motor Vehicle Driver Licensing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-104, Hawaii Revised Statutes, is amended to read as follows:

**“§286-104 What persons shall not be licensed.** The examiner of drivers shall not issue any license hereunder:

- (1) To any person whose license has been suspended by a court of competent jurisdiction during the suspension period; nor to any person whose license has been revoked until the expiration of one year after the date of the revocation, or until the expiration of the period of revocation specified by law, whichever is greater; nor to any person who, while unlicensed, has within two years been convicted of driving while drunk;
- (2) To any person who is required by this part to take an examination, unless such person has successfully passed the examination;
- (3) To any person who is required under the motor vehicle financial responsibility laws of this State to deposit proof of financial responsibility and who has not deposited such proof;



- (4) To any person when the examiner of drivers has good cause to believe that such person by reason of physical or mental disability would not be able to operate a motor vehicle with safety upon the highways; or
- (5) To any person who is under seventeen years of age; provided that a person who is fifteen or sixteen years of age may be granted a special license upon satisfying the requirements of sections 286-108 and 286-109, which license may be suspended or revoked by a judge having jurisdiction over the holder of the special license. Upon revocation of the special license, the person shall not be eligible to operate a motor vehicle on the highway until the person is seventeen years of age and has again satisfied the requirements of section<sup>1</sup> 286-108 and 286-109[;
- (6) To any person who has been ordered to be hospitalized under chapter 334 or committed under chapter 333F unless the director of health certifies to the examiner of drivers that the person is mentally competent and may be examined to determine the person's fitness to operate a motor vehicle].

Any person denied a license under this or any other section of this part shall have a right of appeal as hereinafter provided."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

**Note**

- 1. Prior to amendment "sections" appeared here.

**ACT 37**

H.B. NO. 3580

A Bill for an Act Relating to the Adjudication of Vehicular Traffic Violations at Public Airports.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 261-21, Hawaii Revised Statutes, is amended to read as follows:

**"§261-21 Penalties.** (a) Any person violating this chapter, or any of the rules or orders issued pursuant thereto relating to (1) safety measures, practices, or requirements, and (2) airport security measures or requirements, duly adopted or served, shall be guilty of a misdemeanor.

(b) [Any] Except as provided in subsection (c), any person violating any rule relating to motor vehicles and traffic control or the operation of any equipment or motor vehicle in or on the operational area of the airport shall be guilty of an offense as defined under the Penal Code and be fined not more than \$500.

(c) Any person violating any rule relating to parking of motor vehicles or equipment at a public airport shall have committed a traffic infraction as set forth in chapter 291D, the adjudication of which shall be subject to the provisions contained therein."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 1996.

(Approved April 22, 1996.)

ACT 38

H.B. NO. 3592

A Bill for an Act Relating to the Board of Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 13-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Members of the board of education shall be nominated at a primary election and elected at the general election. Except as otherwise provided by this chapter, the candidates for the board of education shall be elected in the manner prescribed by this title.

- (1) Nomination papers, preparation of. The chief election officer shall prepare nomination papers in such a manner that a candidate desiring to file for election to the board of education shall be able to specify whether the candidate is seeking a seat requiring residency in a particular departmental school district or a seat without such residency requirement.
- (2) Ballot. The school board ballot shall be prepared in such a manner as to afford every voter eligible to vote in a school board district race[,] the opportunity to vote for each and every candidate seeking election from that school board district.

The school board ballot shall contain the names of all board candidates arranged alphabetically in a nonpartisan manner; provided that the names of candidates seeking seats requiring residency in a particular departmental school district shall be grouped alphabetically according to departmental school districts.

- (3) Primary election. Two candidates receiving the most votes for each available seat shall be nominated for the general election. If, after the close of filing of nomination papers, there are only two qualified candidates for any seat requiring residency in a particular departmental school district, the chief election officer shall declare those two candidates duly nominated for the general election. The names of those two candidates shall not appear on the primary election ballot.
- (4) General election. Each voter in the general election shall be entitled to receive the school board ballot and to vote for the number of seats available in the respective school board districts.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 22, 1996.)

## ACT 39

H.B. NO. 3623

A Bill for an Act Relating to the Uniform Commercial Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 490, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

**“ARTICLE 5.  
LETTERS OF CREDIT**

**§490:5-101 Short title.** This Article may be cited as Uniform Commercial Code—Letters of Credit.

**§490:5-102 Definitions.** (a) As used in this Article:

- (1) “Adviser” means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.
- (2) “Applicant” means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.
- (3) “Beneficiary” means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.
- (4) “Confirmer” means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.
- (5) “Dishonor” of a letter of credit means failure to timely honor or take an interim action, such as acceptance of a draft, that may be required by the letter of credit.
- (6) “Document” means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in section 490:5-108(e), and (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.
- (7) “Good faith” means honesty in fact in the conduct or transaction concerned.
- (8) “Honor” of a letter of credit means performance of the issuer’s undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, “honor” occurs
  - (i) Upon payment;
  - (ii) If the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or
  - (iii) If the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

- (9) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.
- (10) "Letter of credit" means a definite undertaking that satisfies the requirements of section 490:5-104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.
- (11) "Nominated person" means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit, and (ii) undertakes by agreement or custom and practice to reimburse.
- (12) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.
- (13) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.
- (14) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (15) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

(b) Definitions in other articles applying to this Article and the sections in which they appear are:

"Accept" or "Acceptance". Section 490:3-409

"Value". Sections 490:3-303, 490:4-211

(c) Article 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this Article.

**§490:5-103 Scope.** (a) This Article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this Article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this Article.

(c) With the exception of this subsection, subsections (a) and (d), sections 490:5-102(a), 490:5-106(d), and 490:5-114(d), the effect of this Article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking, except to the extent prohibited in sections 490:1-102(3) and 490:5-117(d). A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this Article.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

**§490:5-104 Formal requirements.** A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated (i) by a signature, or (ii) in accordance with the agreement of the parties or the standard practice referred to in section 490:5-108(e).

**§490:5-105 Consideration.** Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.

**§490:5-106 Issuance, amendment, cancellation, and duration.** (a) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(b) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(c) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(d) A letter of credit that states that it is perpetual expires five years after its stated date of issuance, or if none is stated, after the date on which it is issued.

**§490:5-107 Confirmer, nominated person, and advisor.** (a) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(b) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(c) A person requested to advise may decline to act as an adviser. An adviser who is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

(d) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (c). The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

**§490:5-108 Issuer's rights and obligations.** (a) Except as otherwise provided in section 490:5-109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (e), appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in section 490:5-113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(b) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day after the day of its receipt of documents:

- (1) To honor;
- (2) If the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft, or incur a deferred obligation; or
- (3) To give notice to the presenter of discrepancies in the presentation.

(c) Except as otherwise provided in subsection (d), an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(d) Failure to give the notice specified in subsection (b) or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor, fraud, or forgery as described in section 490:5-109(a) or expiration of the letter of credit before presentation.

(e) An issuer shall observe the standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(f) An issuer is not responsible for:

- (1) The performance or nonperformance of the underlying contract, arrangement, or transaction;
- (2) An act or omission of others; or
- (3) Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (e).

(g) If an undertaking constituting a letter of credit contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(h) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(i) An issuer that has honored a presentation as permitted or required by this Article:

- (1) Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;
- (2) Takes the documents free of claims of the beneficiary or presenter;
- (3) Is precluded from asserting a right of recourse on a draft under sections 490:3-414 and 490:3-415;
- (4) Except as otherwise provided in sections 490:5-110 and 490:5-117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender that are apparent on the face of the presentation; and
- (5) Is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

**§490:5-109 Fraud and forgery.** (a) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

- (1) The issuer shall honor the presentation, if honor is demanded by (i) a nominated person who has given value in good faith and without notice of forgery or material fraud, (ii) a confirmer who has honored its confirmation in good faith, (iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person, or (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and
- (2) The issuer, acting in good faith, may honor or dishonor the presentation in any other case.

(b) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the

beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

- (1) The relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;
- (2) A beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;
- (3) All of the conditions to entitle a person to the relief under the law of this State have been met; and
- (4) On the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under subsection (a)(1).

**§490:5-110 Warranties.** (a) If its presentation is honored, the beneficiary warrants:

- (1) To the issuer, any other person to whom presentation is made, and the applicant, that there is no fraud or forgery of the kind described in section 490:5-109(a); and
- (2) To the applicant, that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(b) The warranties in subsection (a) are in addition to warranties arising under Articles 3, 4, 7, and 8 because of the presentation or transfer of documents covered by any of those Articles.

**§490:5-111 Remedies.** (a) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer shall be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(b) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(c) If an adviser or nominated person other than a confirmer breaches an obligation under this Article or an issuer breaches an obligation not covered in subsection (a) or (b), a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (a) and (b).

(d) An issuer, nominated person, or adviser who is found liable under subsection (a), (b), or (c) shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

(e) Reasonable attorneys' fees and other expenses of litigation shall be awarded to the prevailing party in an action in which a remedy is sought under this Article.

(f) Damages that would otherwise be payable by a party for breach of an obligation under this Article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated.

**§490:5-112 Transfer of letter of credit.** (a) Except as otherwise provided in section 490:5-113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(b) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

- (1) The transfer would violate applicable law; or
- (2) The transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in section 490:5-108(e) or is otherwise reasonable under the circumstances.

**§490:5-113 Transfer by operation of law.** (a) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(b) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (e), an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in section 490:5-108(e) or, in the absence of this practice, compliance with other reasonable procedures sufficient to protect the issuer.

(c) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(d) Honor of a purported successor's apparently complying presentation under subsection (a) or (b) has the consequences specified in section 490:5-108(i) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of section 490:5-109.

(e) An issuer whose rights of reimbursement are not covered by subsection (d) or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (b).

(f) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

**§490:5-114 Assignment of proceeds.** (a) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or



delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(b) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

(c) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(d) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(e) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(f) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by article 9 or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Article 9 or other law.

**§490:5-115 Statute of limitations.** An action to enforce a right or obligation arising under this Article must be commenced within one year after the expiration date of the relevant letter of credit or one year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

**§490:5-116 Choice of law and forum.** (a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in section 490:5-104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b) Unless subsection (a) applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(c) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this Article would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b), (ii) the relevant undertaking incorporates rules of custom or

practice, and (iii) there is conflict between this Article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in section 490:5-103(c).

(d) If there is conflict between this Article and Article 3, 4, 4A, or 9, this Article governs.

(e) The forum for settling disputes arising out of an undertaking within this Article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a).

**§490:5-117 Subrogation of issuer, applicant, and nominated person.** (a)

An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

(b) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (a).

(c) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

- (1) The issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;
- (2) The beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and
- (3) The applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(d) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (a) and (b) do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (c) do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse."

SECTION 2. Section 490:1-105, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) Where one of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified: Rights of creditors against sold goods. Section 490:2-402.

Applicability of the Article on Leases. Sections 490:2A-105 and 490:2A-106.

Applicability of the Article on Bank Deposits and Collections. Section 490:4-102.

Governing law in the Article on Funds Transfers. Section 490:4A-507.

Letters of Credit. Section 490:5-116.

Bulk sales subject to the Article on Bulk Sales. Section 490:6-103.

Applicability of the Article on Investment Securities. Section 490:8-106.

Perfection provisions of the Article on Secured Transactions. Section 490:9-103."

SECTION 3. Section 490:2-512, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- “(1) Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless
- (a) The nonconformity appears without inspection; or
  - (b) Despite tender of the required documents the circumstances would justify injunction against honor under [the provisions of] this chapter (section [490:5-114].) 490:5-109(b)).”

SECTION 4. Section 490:9-103, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- “(1) Documents, instruments, letters of credit, and ordinary goods.
- (a) This subsection applies to documents [and], instruments, rights to proceeds of written letters of credit, and [to] goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).
  - (b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.
  - (c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.
  - (d) When collateral is brought into and kept in this State while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by part 3 of this Article to perfect the security interest,
    - (i) If the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this State, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;
    - (ii) If the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;
    - (iii) For the purpose of priority over a buyer of consumer goods (subsection (2) of section 490:9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).”

SECTION 5. Section 490:9-104, Hawaii Revised Statutes, is amended to read as follows:

“§490:9-104 Transactions excluded from article. This Article does not apply

- (a) To a security interest subject to any statute of the United States to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or
- (b) To a landlord's lien; or
- (c) To a lien given by statute or other rule of law for services or materials except as provided in section 490:9-310 on priority of such liens; or
- (d) To a transfer of a claim for wages, salary or other compensation of an employee; or
- (e) To a transfer by government or governmental subdivision or agency; or
- (f) To a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or
- (g) To a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds (section 490:9-306) and priorities in proceeds (section 490:9-312); or
- (h) To a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or
- (i) To any right of set-off; or
- (j) Except to the extent that provision is made for fixtures in section 490:9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; [or]
- (k) To a transfer in whole or in part of any claim arising out of tort[.];
- (l) To a transfer of an interest in any deposit account (subsection (1) of section 490:9-105), except as provided with respect to proceeds (section 490:9-306) and priorities in proceeds (section 490:9-312); or
- (m) To a transfer of an interest in a letter of credit other than the rights to proceeds of a written letter of credit.”

SECTION 6. Section 490:9-105, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

- “(3) The following definitions in other Articles apply to this Article:
- “Check”. Section 490:3-104.
- “Contract for sale”. Section 490:2-106.
- “Holder in due course”. Section 490:3-302.
- “Letter of credit”. Section 490:5-102.
- “Note”. Section 490:3-104.
- “Proceeds of a letter of credit”. Section 490:5-114(a).
- “Sale”. Section 490:2-106.”

SECTION 7. Section 490:9-106, Hawaii Revised Statutes, is amended to read as follows:

**“§490:9-106 Definitions: “account”; “general intangibles”.** “Account” means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. “General intangibles” means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property, rights to proceeds of written letters of credit, and money. All

rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts.”

SECTION 8. Section 490:9-304, Hawaii Revised Statutes, is amended to read as follows:

**“§490:9-304 Perfection of security interest in instruments, documents, proceeds of a written letter of credit, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.** (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in the rights to proceeds of a written letter of credit can be perfected only by the secured party’s taking possession of the letter of credit. A security interest in money or instruments (other than certificated securities or instruments which constitute part of chattel paper) can be perfected only by the secured party’s taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of section 490:9-306 on proceeds.

(2) During the period that goods are in possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee’s receipt of notification of the secured party’s interest or by filing as to the goods.

(4) A security interest in instruments (other than certified<sup>1</sup> securities) or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument (other than a certificated security), a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor:

- (a) Makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange, but priority between conflicting security interests in the goods is subject to section 490:9-312(3); or
- (b) Delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.

(6) After the twenty-one day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this Article.”

SECTION 9. Section 490:9-305, Hawaii Revised Statutes, is amended to read as follows:

**“§490:9-305 When possession by secured party perfects security interest without filing.** A security interest in [letters of credit and advices of credit (subsection (2)(a) of section 490:5-116),] goods, instruments (other than certificated securities), money, negotiable documents, or chattel paper may be perfected by the secured party’s taking possession of the collateral. A security interest in the right to proceeds of a written letter of credit may be perfected by the secured party’s taking possession of the letter of credit. If such collateral other than goods covered by a

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negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this Article. The security interest may be otherwise perfected as provided in this Article before or after the period of possession by the secured party."

SECTION 10. Article 5 of chapter 490, Hawaii Revised Statutes, is repealed.

SECTION 11. This Act applies to a letter of credit issued on or after the effective date of this Act. This Act does not apply to a transaction, event, obligation, or duty arising out of or associated with a letter of credit that was issued before the effective date of this Act.

SECTION 12. A transaction arising out of or associated with a letter of credit that was issued before the effective date of this Act and the rights, obligations, and interests flowing from that transaction are governed by any statute or other law amended or repealed by this Act as if repeal or amendment had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law.

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 14. This Act shall take effect on July 1, 1996.

(Approved April 22, 1996.)

### Note

1. Prior to amendment "certificated" appeared here.

## ACT 40

S.B. NO. 2098

A Bill for an Act Relating to State Finances.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 40, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**"§40- Prior year accounts.** The comptroller shall establish new accounts for all special and revolving funds on July 1 of each fiscal year. All unencumbered cash balances for special and revolving funds established in previous years shall be deposited in the appropriate account for the current fiscal year unless otherwise provided by law; provided that this section shall not apply to those funds which are designated by either the legislature or the director of finance for transfer to the general fund.

**§40- Encumbrances, when void.** (a) All encumbrances for claims which the comptroller has determined to be inactive shall become void six months from the end of the fiscal year of the original encumbrance, or within a period of time less than six months as designated by the comptroller.

(b) All encumbrances for contracts shall become void after five years from the end of the fiscal year of the original encumbrance; provided that the comptroller may grant an exemption from this subsection if the comptroller finds that there is sufficient justification to extend a contract encumbrance.”

SECTION 2. Section 37-44, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 37-45, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 1996.

(Approved April 23, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 41

S.B. NO. 2728

A Bill for an Act Relating to Escrow Depositories.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 449-11, Hawaii Revised Statutes, is amended to read as follows:

**“§449-11 Fidelity bonds; deposit.** A licensed escrow depository shall at all times either:

- (1) Maintain a fidelity [bonds] bond executed by a surety insurer authorized to do business in the State [and] in [amounts of] an amount not less than [\$5,000 and not more than] \$25,000[, to be approved by]; provided that, any bond which is subject to a deductible thereunder, in excess of \$5,000 per occurrence, shall require the prior approval of the commissioner[;], who may take into consideration, among other factors, the amount of the proposed bond; or

- (2) Deposit an equivalent amount of cash or securities under such terms and conditions as are acceptable to the commissioner,

upon all of its officers and employees who have access to money or negotiable securities or instruments in its possession or under its control. Notwithstanding the above provision, the escrow depository may carry bonds or deposit cash or securities above the amounts required by the commissioner.”

SECTION 2. Section 449-12, Hawaii Revised Statutes, is amended to read as follows:

**“§449-12 Errors and omissions insurance; deposit.** A licensed escrow depository shall at all times either:

- (1) Maintain a policy of errors and omissions insurance executed by an insurer authorized to do business in the State in an amount [of] not less than [\$50,000, and not more than] \$100,000[, with]; provided that any policy which is subject to a deductible thereunder [not to exceed] in excess of \$10,000, per occurrence, [to be approved by] shall require the

- prior approval of the commissioner[;], who may take into consideration, among other factors, the amount of the proposed coverage; or
- (2) Deposit an equivalent amount of cash or securities under such terms and conditions as are acceptable to the commissioner.”

SECTION 3. Section 449-14, Hawaii Revised Statutes, is amended to read as follows:

“**§449-14 Fees.** The following fees shall be paid by licensed escrow depositories to the commissioner and, together with any administrative penalty or other charge assessed under this chapter, shall be deposited into the [general] financial institution examiners’ revolving fund:

- (1) For filing and investigation of an escrow depository’s application for license, \$2,000;
- (2) For initial issuance and annual renewal of an escrow depository’s license, \$100;
- (3) For initial issuance and annual renewal of a branch office license, \$50; and
- (4) For reissuance of a license or endorsement on the license for the change in the business address of its office, \$25.

An escrow depository that fails to make a payment required by this section shall be subject to an administrative penalty of not more than \$200 per day for each day it is in violation of this section.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 23, 1996.)

## ACT 42

S.B. NO. 2797

A Bill for an Act Relating to Women, Infant and Children Services (WIC).

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to amend section 37-54, Hawaii Revised Statutes, by adding the WIC program as an exception to the current law.

SECTION 2. Section 37-54, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All state funds shall be deposited in the state treasury except funds that belong to patients and wards to whom the State is responsible for the funds, funds provided by the United States Department of Agriculture for the special supplemental nutrition program for women, infants, and children, and as otherwise provided by law.”

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 1997.

(Approved April 23, 1996.)



## ACT 43

S.B. NO. 2912

A Bill for an Act Relating to Contractors.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 444-17, Hawaii Revised Statutes, is amended to read as follows:

**“§444-17 Revocation, suspension, and renewal of licenses.** In addition to any other actions authorized by law, the board may revoke any license issued pursuant to this section, or suspend the right of a licensee to use a license, or refuse to renew a license for any cause authorized by law, including but not limited to the following:

- (1) Any dishonest, fraudulent, or deceitful act as a contractor that causes substantial damage to another;
- (2) Engaging in any unfair or deceptive act or practice as prohibited by section 480-2;
- (3) Abandonment of any construction project or operation without reasonable or legal excuse;
- (4) Wilful diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and the use thereof for any other purpose;
- (5) Wilful departure from, or wilful disregard of plans or specifications in any material respect without consent of the owner or the owner's duly authorized representative, that is prejudicial to a person entitled to have the construction project or operation completed in accordance with those plans and specifications;
- (6) Wilful violation of any law of the State, or any county, relating to building, including any violation of any applicable rule of the department of health, or of any applicable safety or labor law;
- (7) Failure to make and keep records showing all contracts, documents, records, receipts, and disbursements by a licensee of all the licensee's transactions as a contractor for a period of not less than three years after completion of any construction project or operation to which the records refer or to permit inspection of those records by the board;
- (8) When the licensee being a partnership or a joint venture permits any partner, member, or employee of the partnership or joint venture who does not hold a license to have the direct management of the contracting business thereof;
- (9) When the licensee being a corporation permits any officer or employee of the corporation who does not hold a license to have the direct management of the contracting business thereof;
- (10) Misrepresentation of a material fact by an applicant in obtaining a license;
- (11) Failure of a licensee to complete in a material respect any construction project or operation for the agreed price if the failure is without legal excuse;
- (12) Wilful failure in any material respect to comply with this chapter or the rules adopted pursuant thereto;
- (13) Wilful failure or refusal to prosecute a project or operation to completion with reasonable diligence;

- (14) Wilful failure to pay when due a debt incurred for services or materials rendered or purchased in connection with the licensee's operations as a contractor when the licensee has the ability to pay or when the licensee has received sufficient funds therefor as payment for the particular operation for which the services or materials were rendered or purchased;
- (15) The false denial of any debt due or the validity of the claim therefor with intent to secure for a licensee, the licensee's employer, or other person, any discount of the debt or with intent to hinder, delay, or defraud the person to whom the debt is due;
- (16) Failure to secure or maintain workers' compensation insurance, unless the licensee is authorized to act as a self-insurer under chapter 386 or is excluded from the requirements of chapter 386;
- (17) Entering into a contract with an unlicensed contractor involving work or activity for the performance of which licensing is required under this chapter;
- (18) Performing service on a residential or commercial air conditioner, utilizing CFCs, without using refrigerant recovery and recycling equipment;
- (19) Performing service on any air conditioner after January 1, 1994, without successful completion of an appropriate training course in the recovery and recycling of CFC and HCFC refrigerants, which included instruction in the proper use of refrigerant recovery and recycling equipment that is certified by Underwriter Laboratories, Incorporated; [and]
- (20) Violating chapter 342C[.]; and
- (21) Failure to pay delinquent taxes, interest, and penalties assessed under chapter 237 that relate to the business of contracting, or to comply with the terms of a conditional payment plan with the department of taxation for the payment of such delinquent taxes, interest, and penalties."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 1996.)

## ACT 44

S.B. NO. 2965

A Bill for an Act Relating to Concessions on Public Property.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 102-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) The bidding requirements of subsection (a) shall not apply to concessions or space on public property set aside for the following purposes:
- (1) For operation of ground transportation services at airports;
  - (2) For lei vendors;
  - (3) For airline and aircraft operations;

- (4) For automatic teller machines and vending machines, except vending machines located at public schools operated by blind or visually handicapped persons in accordance with section 298-21.5;
- (5) For operation of concessions set aside without any charge;
- (6) For operation of concessions by handicapped persons, or blind persons; except concessions operated in the public schools by blind or visually handicapped persons in accordance with section 298-21.5;
- (7) For operation of concessions on permits revocable on notice of thirty days or less; provided that no such permits shall be issued unless the premises covered [therein shall] under the permit is no longer [be] being used for the existing purposes and that the permit is issued as a temporary use of the premises until the governmental agency proceeds to [apply] use the premises for [the new use thereof;] a new purpose; and provided further that no permits shall be issued for more than one year;
- (8) For operation of concessions or concession spaces for a beach service association dedicated to the preservation of the Hawaii beachboy tradition, incorporated as a nonprofit corporation in accordance with state law, and whose members are appropriately licensed or certified as required by law; and
- (9) For operation of concessions at county zoos [or], botanic [parks,] gardens, or other county parks which are environmentally, culturally, historically, or operationally unique and are supported, by [support groups that are incorporated as] nonprofit corporations incorporated in accordance with state law[,], solely for purposes of supporting county aims and goals of the zoo [and botanic parks.], botanic garden, or other county park and operating under agreement with the appropriate agency solely for such purposes, aims, and goals."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 1996.)

## ACT 45

S.B. NO. 3052

A Bill for an Act Relating to the Regulation and Licensing of Professions and Vocations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 26H-2, Hawaii Revised Statutes, is amended to read as follows:

**"§26H-2 Policy.** The legislature hereby adopts the following policies [concerning professional and vocational regulation within the State:] regarding the regulation of certain professions and vocations:

- (1) The regulation and licensing of professions and vocations [by the State] shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of

- regulation shall be the protection of the public welfare and not that of the regulated profession or vocation;
- (2) [Where regulation of professions and vocations is reasonably necessary to protect consumers, government regulation] Regulation in the form of full licensure or other restrictions on [the] certain professions or vocations [should] shall be retained or adopted[;] when the health, safety, or welfare of the consumer may be jeopardized by the nature of the service offered by the provider;
  - [(3) Professional and vocational regulations shall be imposed where necessary to protect consumers who, because of a variety of circumstances, may be at a disadvantage in choosing or relying on the provider of the service;
  - (4)] (3) Evidence of abuses by providers of the service shall be accorded great weight in determining whether [government] regulation is desirable;
  - [(5) (4) Professional and vocational [regulation] regulations which artificially [increases] increase the costs of goods and services to the consumer [should] shall be avoided[;] except in those cases where the legislature determines that this cost is exceeded by the potential danger to the consumer;
  - [(6) (5) Professional and vocational [regulation should] regulations shall be eliminated [where its] when the legislature determines that they have no further benefits to consumers [are outweighed by its costs to taxpayers]; [and]
  - [(7) (6) Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons[.]; and
  - (7) Fees for regulation and licensure shall be imposed for all vocations and professions subject to regulation; provided that the aggregate of the fees for any given regulatory program shall not be less than the full cost of administering that program."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 1996.)

## ACT 46

S.B. NO. 3188

A Bill for an Act Relating to Taxes on Time Share Real Property.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 514E-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The plan manager, if any, shall [be primarily liable for the payment of] collect and pay real property taxes due on the time share units under the plan manager’s authority[.] as the agent of the owners of individual units or temporal divisions thereof. The liability of the individual owners of the units, or temporal division thereof, for real property taxes, shall be primary to all parties except the

plan manager. The right to contest or appeal any real property assessment shall apply to the plan manager and any person having an interest in a time share unit."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 1996.)

## ACT 47

S.B. NO. 3267

A Bill for an Act Relating to Student Activities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the public education system has been undergoing significant reforms over the past several years, in order to shift its focus from the administration of the education system to the education of students. School/community-based management and student-centered schools have provided individual schools the opportunity to establish alternative administrative and instructional frameworks that focus on meeting the needs of their specific student population. These restructured schools provide the opportunity for students to be more actively involved in decisions related to the governance structure and instructional programs offered at their schools. Thus, the student body needs to also review its own governance structures as part of this paradigm shift from a top-down bureaucracy to participation by all members of the student body.

The purpose of this Act is to request the student conference committee to suspend the annual conference of students for 1997 and convene a student governance summit to review the organizational structure and roles and responsibilities of the student conference committee and the individual school councils.

SECTION 2. The student conference committee, established pursuant to section 317-2, Hawaii Revised Statutes, is requested to take appropriate actions necessary to suspend the annual conference of students for 1997, and in its place convene a student summit to review the organizational structure and roles and responsibilities of the student conference committee and the individual school councils, in consideration of the implementation of school/community-based management and student-centered schools. Specifically, the student summit is requested to:

- (1) Evaluate whether the present organizational structures of the student conference committee and the individual school councils are aligned with the implementation of school/community-based management and student-centered schools;
- (2) Evaluate whether the present roles and responsibilities of the student conference committee and the individual school councils are aligned with the implementation of school/community-based management and student-centered schools; and
- (3) If so deemed, recommend how the student conference committee and the individual school councils could be reorganized to better facilitate the implementation of school/community-based management and student-centered schools.

The student conference committee shall submit a report of its findings and recommendations from the student summit to the board of education and the legislature during the 1997 regular session.

The department of education shall provide staff support as necessary to the student conference committee in the convening of the student summit, including the operation of the summit and the submission of the summit report to the board of education and the legislature.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 23, 1996.)

## ACT 48

S.B. NO. 3004

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 296-102, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For the purposes of this section, “student-centered schools” means the implementation of alternative frameworks with regard to curriculum; facilities management; instructional approach; length of the school day, week, or year; and personnel management[.]; and may include two or more schools acting jointly. Any public school, up to a total of twenty-five schools, may establish a student-centered school; provided that:

- (1) Any public school which establishes a student-centered school shall be exempt from all applicable state laws; except those regarding:
  - (A) Collective bargaining under chapter 89, provided that the exclusive representatives and the employers defined in chapter 89 may enter into agreements which contain cost and noncost items to facilitate decentralized decision-making;
  - (B) State procurement laws; and
  - (C) Religious, racial, or sexual bias, and health and safety requirements;
- (2) The school establishes a local school board as its governing body composed of, at a minimum, one representative from each of the following participant groups:
  - (A) Principals;
  - (B) Instructional staff members selected by the school instructional staff;
  - (C) Support staff selected by the support staff of the school;
  - (D) Parents of students attending the school selected by the parents of the school;
  - (E) Student body representatives selected by the students of the school; and
  - (F) The community at-large selected by the board;
- (3) The local school board may formulate school-based educational policy and goals in accordance with statewide educational performance standards, adopt school performance standards and assessment mechanisms, monitor school success, and may select the principal as the chief executive officer of the school in accordance with chapter 89. The

principal shall consult and work collaboratively with the local school board and have jurisdiction over the internal organization, operation, and management of the school;

- (4) The local school board has developed a detailed implementation plan containing the elements prescribed under subsection (b) for a student-centered school that has been approved by three-fifths of the school's administrative, support, and teaching personnel, and parents; provided that the school personnel may request their bargaining unit representatives to certify and conduct the elections for their respective bargaining units;
- (5) The detailed implementation plan has been submitted to the board of education for review;
- (6) The detailed implementation plan assures compliance with statewide student performance standards; and
- (7) [All] No student-centered schools shall [not] charge tuition."

SECTION 2. If S.B. No. 2446<sup>1</sup> or H.B. No. 3252<sup>2</sup> is passed by the legislature in any form during this regular session of 1996, whether before or after the effective date of this Act, then section -1224, Hawaii Revised Statutes, as contained in Section 2 of S.B. No. 2446<sup>1</sup> or H.B. No. 3252,<sup>2</sup> as the case may be, shall be amended to reflect the amendment of section 296-102, Hawaii Revised Statutes, in this Act.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 24, 1996.)

#### Notes

1. Act 89.
2. Did not pass legislature.

## ACT 49

S.B. NO. 2263

A Bill for an Act Relating to Foreign Money Judgments.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### "CHAPTER UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

§ -1 **Short title.** This chapter may be cited as the Uniform Foreign Money-Judgments Recognition Act.

§ -2 **Definitions.** As used in this chapter:

"Foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.

"Foreign state" means any governmental unit other than the United States, or any state, district, commonwealth, territory, or insular possession thereof.

§ -3 **Applicability.** This chapter shall apply to any foreign judgment that is final, conclusive, and enforceable where rendered even though an appeal therefrom is pending or is subject to appeal.

§ -4 **Recognition and enforcement.** (a) Except as provided in section -5, a foreign judgment meeting the requirements of section -3 shall be conclusive between the parties to the extent that it grants or denies recovery of a sum of money. A copy of any foreign judgment may be filed in the office of the clerk of an appropriate court of this State. The foreign judgment shall be enforceable in the same manner as the judgment of a sister-state that is entitled to full faith and credit.

(b) At the time of the filing of the foreign judgment, the judgment creditor or the judgment creditor's attorney shall:

- (1) Make and file with the clerk of the court an affidavit setting forth the name and last known post office address given;
- (2) Mail notice of the filing to the judgment debtor at the address given; and
- (3) Make note of the mailing in the docket.

The notice shall include the name and post office address of the judgment creditor and the judgment creditor's attorney, if any, in this State. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. The failure by the clerk to mail notice of filing shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

§ -5 **Grounds for non-recognition.** (a) A foreign judgment shall not be conclusive if:

- (1) The judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- (2) The foreign court did not have personal jurisdiction over the defendant; or
- (3) The foreign court did not have jurisdiction over the subject matter.

(b) A foreign judgment need not be recognized if:

- (1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable the defendant to defend;
- (2) The judgment was obtained by fraud;
- (3) The cause of action on which the judgment is based is repugnant to the public policy of this State;
- (4) The judgment conflicts with another final and conclusive judgment;
- (5) The proceedings in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or
- (6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

§ -6 **Personal jurisdiction.** (a) The foreign judgment shall not be refused recognition for lack of personal jurisdiction if:

- (1) The defendant was served personally in the foreign state;
- (2) The defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over the defendant;



- (3) The defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;
  - (4) The defendant was domiciled in the foreign state when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state;
  - (5) The defendant had a business office in the foreign state and the proceedings in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign state; or
  - (6) The defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a cause of action arising out of that operation.
- (b) The courts of this State may recognize other basis of jurisdiction.

§ -7 **Stay in case of appeal.** If the defendant satisfies the court either that an appeal is pending, or that the defendant is entitled and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal.

§ -8 **Severability.** This chapter shall not prevent the recognition of a foreign judgment in situations not covered by this chapter.

§ -9 **Uniformity of interpretation.** This chapter shall be construed to effectuate its general purpose, which is to make uniform the law of those states that enact it.”

SECTION 2. This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 24, 1996.)

## ACT 50

S.B. NO. 2340

A Bill for an Act Relating to Hunting.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 183D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§183D- **Hunting guides; licensing and reporting requirements.** (a) No person shall engage in the business of soliciting and guiding clients for the purpose of taking any game bird or mammal without first procuring a hunting guide license.

(b) A hunting guide license shall be issued to any person who possesses a valid state hunting license and registers with the department; provided that hunting

guides shall provide service only to clients with a current State hunting license, unless the client is otherwise exempted by the department.

(c) Hunting guides shall provide an annual report to the department of their guide activities that shall include the number of clients served and the clients' residency status. The reports shall be submitted within thirty days after the expiration of the hunting guide license issued pursuant to this section. The failure to submit an annual report within the time specified shall be grounds for the revocation and nonrenewal of the hunting guide license."

SECTION 2. Section 183D-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any person violating section 183D-2, 183D-3, 183D-26, 183D-27, 183D-28, 183D-31, 183D-32, 183D-62, or 183D-64 shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as follows:

- (1) For a first conviction by a fine of not less than \$100 nor more than \$1,000, or by imprisonment of not more than one year, or both;
- (2) For a second conviction within five years of a previous conviction, by a fine of not less than \$250 nor more than \$1,000, or by imprisonment of not more than one year, or both; and
- (3) For a third or subsequent conviction within five years of the first two or more convictions, by a fine of not less than \$500 nor more than \$1,000, or by imprisonment of not more than one year, or both."

SECTION 3. Section 183D-34, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The fee for private and commercial shooting preserve and farmer's licenses shall be set by the department; provided that the department may authorize any governmental agency to breed and sell game birds and may authorize any person to possess lawfully obtained game birds. In addition to any other applicable fees, private and commercial shooting preserve licensees shall remit, with their quarterly report, [an amount] a fee equal to the current nonresident hunting license fee, as established in section 183D-22(b)(2), per each nonresident hunter exempted from the licensing requirement under subsection (b)[, to the department for deposit]; provided that for each nonresident hunter who participates in one day or less of hunting during a calendar year, the fee shall be fifty per cent of the current nonresident hunting license fee. The fees collected under this subsection shall be deposited into the wildlife revolving fund."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on January 1, 1997.

(Approved April 24, 1996.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

ACT 51

S.B. NO. 2341

A Bill for an Act Relating to the Community Colleges.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 305-1, Hawaii Revised Statutes, is amended to read as follows:

**“§305-1 System of community colleges[.]; purpose.** (a) The board of regents of the University of Hawaii shall develop and administer a system of community colleges.

(b) The purposes of community colleges shall be to provide [two-year];

(1) Two-year college transfer and general education programs[, semiprofessional,];

(2) Two- and four-year vocational technical education programs;

(3) Semiprofessional, technical, vocational, and continuing education programs[,]; and [such]

(4) Such other educational programs and services as [are] may be appropriate to such institutions.

(c) The board may confer a corresponding degree or certificate upon the successful completion of any educational program described in subsection (b) to all students who are entitled thereto.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 24, 1996.)

ACT 52

S.B. NO. 2487

A Bill for an Act Relating to the Ombudsman.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 28-8.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No department of the State other than the attorney general may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply to the employment or retention of attorneys:

(1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;

(2) By any court or judicial or legislative office of the State;

(3) By the legislative reference bureau;

(4) By any compilation commission that may be constituted from time to time;

(5) By the real estate commission for any action involving the real estate recovery fund;

- (6) By the contractors license board for any action involving the contractors recovery fund;
- (7) By the trustees for any action involving the travel agency recovery fund;
- (8) By the office of Hawaiian affairs;
- (9) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485;
- (10) As grand jury counsel;
- (11) By the Hawaiian home lands trust individual claims review panel;[or]
- (12) By a department, in the event the attorney general, for reasons deemed by the attorney general good and sufficient, declines to employ or retain an attorney for a department; provided that the governor thereupon waives the provision of this section[.]; or
- (13) By the office of ombudsman."

SECTION 2. Section 96-15, Hawaii Revised Statutes, is amended to read as follows:

**"§96-15 Misconduct by agency personnel.** If the ombudsman [thinks] has a reasonable basis to believe that there [is] may be a breach of duty or misconduct by any officer or employee of an agency, the ombudsman [shall] may refer the matter to the appropriate authorities[.] without notice to that person."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 24, 1996.)

## ACT 53

S.B. NO. 2772

A Bill for an Act Relating to the Distribution of Cigarettes in Packages Containing Less than Twenty Cigarettes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 712, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

**"§712- Prohibited cigarette sales of less than twenty.** (1) It shall be unlawful to sell single cigarettes or packs of cigarettes containing less than twenty cigarettes. It further shall be unlawful to sell cigarettes other than in sealed packages originating with the manufacturer and bearing the health warning required by law.

(2) As used in this section, "to sell" include: to solicit and receive an order for; to have, or keep, or offer, or expose for sale; to deliver for value or in any other way than purely gratuitously; to peddle; to keep with intent to sell; and to traffic in.

(3) "Sale" includes every act of selling as defined in this subsection.

(4) Any person who violates subsection (1), shall be fined not more than \$2,500 for the first offense. Any subsequent offense shall subject the person to a fine of not less than \$100 and not more than \$5,000."

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved April 24, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 54

S.B. NO. 2929

A Bill for an Act Relating to the Enforcement of Criminal Provisions under Title 14 Administered by the Department of Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Sections<sup>1</sup> 231-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Person” as used in sections 231-34, 231-35, and 231-36 includes an officer or employee of a corporation, a partner or employee of a partnership, a trustee of a trust, a fiduciary of an estate, or a member, employee, or principal of any other entity, who as such officer, employee, partner, trustee fiduciary, member, or principal is under a duty to perform and is principally responsible for performing the act in respect of which the violation occurs.”

SECTION 2. Section 231-35, Hawaii Revised Statutes, is amended to read as follows:

**“§231-35 Wilful failure to file return [or], supply information[.], or secure a license.** Any person required to make a return, make a report, keep any records, [or] supply any information, or secure a license required under title 14, who wilfully fails to make the return, make the report, keep the records, [or] supply the information, or secure the license, at the time or times required by law, shall in addition to other penalties provided by law, [shall] be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned not more than one year, or both; provided that a corporation shall be fined not more than \$100,000.”

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 24, 1996.)

Note

1. So in original.

A Bill for an Act Relating to Liquor Licenses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 281-31, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

“(j) Class 9. Tour or cruise vessel licenses. A general license may be granted to the owner of any tour or cruise vessel for the sale of liquor (other than alcohol) on board the vessel while in the waters of the State; provided that sales be made only for consumption by passengers on board while the vessel is in operation outside the port or dock of any island of the State[.], unless otherwise approved by the county where the license has been issued. If the vessel has a home port in the State, the license shall be issuable in the county wherein the home port is situated; provided that if the licensee’s home port is not situated in this State, the license shall be issuable in the city and county of Honolulu. If on any vessel for which no license has been obtained under this chapter any liquor is sold or served within three miles of the shore of any island of the State, the same shall constitute a violation of this chapter.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 24, 1996.)

A Bill for an Act Relating to Antique Motor Vehicles.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 249-1, Hawaii Revised Statutes, is amended by amending the definition of “antique motor vehicle” to read as follows:

““Antique motor vehicle” means any motor vehicle, including a motorcycle or a motor scooter which produces not more than twelve horsepower, of the age of thirty-five years or more from the date of manufacture, that is of the original factory specification or restored to the original specifications in an unaltered or unreconstructed condition, operated or moved over the highway primarily for the purpose of historical exhibition or other similar purposes.”

SECTION 2. Section 431:10C-104, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The provisions of this article shall not apply to any vehicle owned by or registered in the name of any agency of the federal government[.], or to any antique motor vehicle as defined in section 249-1.”

SECTION 3. Section 431:10G-102, Hawaii Revised Statutes, is amended to read as follows:

**“§431:10G-102 Conditions of operation and registration of motorcycles and motor scooters.** No person shall drive a motorcycle or motor scooter upon any public street, road, or highway of this State at any time unless such motorcycle or motor scooter is insured at all times under a liability policy as provided in section 431:10G-301[.]; provided that this article shall not apply to any antique motorcycle or motor scooter as defined in section 249-1.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 24, 1996.)

## ACT 57

S.B. NO. 678

A Bill for an Act Relating to Public Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### “CHAPTER INTERSTATE CORRECTIONS COMPACT

§ -1 **Interstate Corrections Compact.** The Interstate Corrections Compact as contained herein is hereby enacted into law and entered into on behalf of the State of Hawaii with any and all other states legally joining therein in the form substantially as follows:

#### INTERSTATE CORRECTIONS COMPACT ARTICLE I

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment, and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment, and rehabilitation of offenders with the most economical use of human and material resources.

#### ARTICLE II

As used in this compact, unless the context clearly requires otherwise:

“Inmate” means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.

“Institution” means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates as defined in this section may lawfully be confined.

“Receiving state” means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

“Sending state” means a state party to this compact in which conviction or court commitment was had.

“State” means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; and the Commonwealth of Puerto Rico.

### ARTICLE III

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

- (1) Its duration.
- (2) Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance.
- (3) Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.
- (4) Delivery and retaking of inmates.
- (5) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

### ARTICLE IV

(a) Whenever the appropriate authority in a state party to this compact, and which has entered into a contract pursuant to article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, the appropriate authority may direct that the confinement be within an institution within the territory of the other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of article III.



(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify that record to the authority designated by the sending state, in order that each inmate may have official review of the inmate's record in determining and altering the disposition of the inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authority of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by appropriate authority of a sending state. In the event such hearing or hearings are had before an authority of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. The record together with any recommendations of the hearing authority shall be transmitted forthwith to the authority before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the authority of the receiving state shall act solely as agent of the sending state and no final determination shall be made in any matter except by the appropriate authority of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or the inmate's status changed on account of any action or proceeding in which the inmate could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in the person's exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

## ARTICLE V

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which the inmate is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be constructed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

#### ARTICLE VI

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate authority of the sending state shall be required therefor.

#### ARTICLE VII

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

#### ARTICLE VIII

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate authority of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

#### ARTICLE IX

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation, or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

#### ARTICLE X

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating

therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

§ -2 **Commitment or transfer of inmate.** Any court or other agency or officer of the State having power to commit or transfer an inmate, as defined in article II(d) of the Interstate Corrections Compact, to any institution for confinement may commit or transfer the inmate to any institution within or without the State if the State has entered into a contract or contracts for the confinement of inmates in the institution pursuant to article III of the Interstate Corrections Compact.

§ -3 **Enforcement.** The courts, departments, agencies, and officers of the State or any county shall enforce this compact and shall do all things appropriate to effectuate its purposes and intent that may be within their respective jurisdictions, including but not limited to the making and submission of such reports as are required by the compact.

§ -4 **Hearings.** The director of public safety and the director's authorized subordinates and agents shall hold such hearings as may be requested by any other party state pursuant to article IV(f) of the Interstate Corrections Compact.

§ -5 **Contracts.** The director of public safety may enter into such contracts on behalf of the State as may be appropriate to implement the participation of the State in the Interstate Corrections Compact pursuant to article III thereof. No such contract shall be of any force or effect until approved by the governor and comptroller."

SECTION 2. This Act shall take effect upon approval.

(Approved April 24, 1996.)

## ACT 58

H.B. NO. 1531

A Bill for an Act Relating to Derelict Vehicles.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 290-8, Hawaii Revised Statutes, is amended to read as follows:

"§290-8 **Derelict vehicle.** A vehicle shall be deemed a derelict by the administrative head of the county agency designated to carry out section 290-1, or by the executive director or a representative of the director of the Hawaii housing authority in the case of a vehicle which has been abandoned on property owned, managed, or administered by the authority, if major parts have been removed or material damage to the vehicle has rendered the vehicle inoperable and one of the following conditions exists:

- (1) The vehicle is registered for the current registration period and the registered and legal owners no longer reside at the addresses on record with the county director of finance;
- (2) The vehicle has been registered for the current or previous registration period and the registered and legal owners disclaim ownership;

- (3) The vehicle identification number and license plates have been removed so as to nullify efforts to locate or identify the current registered and legal owners;
- (4) The vehicle has not been registered for the current or previous registration periods;
- (5) The vehicle registration records of the county director of finance contain no record that the vehicle has ever been registered in the county; or
- (6) The vehicle is ten model years old or older.

Prior to authorizing the removal of a derelict vehicle, the administrative head of the county agency designated to carry out section 290-1 or the executive director or a representative of the director of the Hawaii housing authority in the case of vehicles which have been abandoned on property owned, managed, or operated by the authority, shall notify the county chief of police[.] only if the vehicle is reported stolen or otherwise needed for police investigation.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved April 24, 1996.)

## ACT 59

S.B. NO. 2738

A Bill for an Act Relating to Unfair and Deceptive Practices.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 437D-19, Hawaii Revised Statutes, is amended to read as follows:

“**[[§437D-19]] Civil penalties.** Any person who violates or attempts to violate any provision of this chapter shall be [fined a sum of not less than \$500 nor more than \$10,000 for each violation, which sum shall be collected in a civil suit brought by the office of consumer protection or the department of commerce and consumer affairs. Each day or instance of violation shall be deemed a separate violation and shall subject the person to a separate civil penalty.] deemed to have engaged in an unfair and deceptive act or practice in the conduct of trade or commerce within the meaning of section 480-2.”

SECTION 2. Section 477E-5, Hawaii Revised Statutes, is amended to read as follows:

“**[[§477E-5] Penalties.] Civil penalties.** Any creditor who violates or attempts to violate any provision of this chapter shall be [fined by a sum not less than \$500 nor more than \$2,500 for each violation, which sum shall be collected in a civil action brought by the director of the office of consumer protection.] deemed to have engaged in an unfair and deceptive act or practice in the conduct of trade or commerce within the meaning of section 480-2.”

SECTION 3. Section 481B-1, Hawaii Revised Statutes, is amended to read as follows:

**“[[§481B-1]] Unsolicited goods, etc., unconditional gift.** [(a)] No person, firm, partnership, association, or corporation, or agent or employee thereof, shall, in any manner, or by any means, offer for sale goods, property, or merchandise, where the offer includes the voluntary and unsolicited sending of goods, property, or merchandise not actually ordered or requested by the recipient, either orally or in writing. The receipt of any such unsolicited goods, property, or merchandise shall for all purposes be deemed an unconditional gift to the recipient who may use or dispose of the same in any manner the recipient sees fit without any obligation on the recipient’s part to the sender.

[(b)] The voluntary and unsolicited sending of goods, property, or merchandise not actually ordered or requested by the recipient as provided in subsection (a) shall constitute unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce under chapter 480.]”

SECTION 4. Section 481B-4, Hawaii Revised Statutes, is amended to read as follows:

**“§481B-4 Penalty.** Any person who violates this chapter shall be [fined not more than \$500 for each violation or imprisoned not more than one year or both.] deemed to have engaged in an unfair method of competition or unfair and deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2.”

SECTION 5. Section 481B-6, Hawaii Revised Statutes, is amended to read as follows:

**“[[§481B-6]] Sale of solar energy devices; disclosure requirements; penalty.** (a) No person shall advertise, offer to sell, or sell a solar energy device unless the person clearly discloses separately the following information concerning the sale price of the solar energy device to the consumer:

- (1) The cost of the solar energy device and accessories related to the operation of the solar energy device and for their installation; and
- (2) The cost of items unrelated to the operation of the solar energy device, including but not limited to, “free gifts”, offers to pay electric bills, rebates, and other incentives designed to promote the sale of the solar device.

(b) As used in this section, “solar energy device” means any new identifiable facility, equipment, apparatus, or the like which makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for its generation.

[(c)] Failure to disclose the information required under this section shall constitute an unfair method of competition and an unfair or deceptive act or practice in the conduct of any trade or commerce under section 480-2.]”

SECTION 6. Section 481B-11, Hawaii Revised Statutes, is amended to read as follows:

**“§481B-11 Refunds; offer of services.** [(a)] Any person who deposits any money to attend a sensitivity-awareness group seminar and before the first day of the seminar, requests to cancel his or her right to attend and requests a refund of moneys deposited or paid, shall be refunded in full less identifiable nonrecoverable costs not to exceed the lesser of \$50 or twenty per cent of the price of the course, by the sensitivity-awareness group. Any person who while attending or after completing a sensitivity-awareness seminar, deposits any money to attend subsequent seminars of

a sensitivity-awareness group and within five days of making the deposit or before the first day of the subsequent seminar, whichever occurs later, requests to cancel his or her right to attend and requests a refund of moneys deposited or paid, shall be refunded in full less identifiable nonrecoverable costs not to exceed the lesser of \$50 or twenty per cent of the price of the course, by the sensitivity-awareness group. Any offering of a sensitivity-awareness group seminar by a representative of the sensitivity-awareness group sponsoring the sensitivity-awareness group seminar shall disclose to the offeree these rights of refund.

For purposes of this section, "sensitivity-awareness groups" includes any individual, associated group of persons, or organizations which advertise or assert that attendance by persons at seminars, meetings, training sessions, therapy sessions, or the like sponsored by the individual, group, or organization, will help the persons attending have greater self-awareness or awareness of others, greater self-understanding or understanding of others, or greater capacity for life adjustment or success in life; provided that psychological or psychotherapeutic techniques are used as part of the individual's, group's, or organization's methodology at the seminars, meetings, training sessions, therapy sessions, or the like. The term "sensitivity-awareness groups" does not include licensed psychologists, or psychologists with a temporary permit, in accordance with chapter 465, or a psychiatrist licensed in accordance with chapter 453, who teach, direct, administer, conduct, preside over, or are similarly involved in seminars, meetings, training sessions, therapy sessions, or the like.

"Sensitivity-awareness group seminars" means any seminar, meeting, training session, therapy session, or the like sponsored by a sensitivity-awareness group for which monetary compensation is required from persons to attend.

[(b) Any violation of this section shall constitute an unfair method of competition and unfair or deceptive act or practice in the conduct of any trade or commerce under section 480-2.]

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved April 24, 1996.)

## ACT 60

S.B. NO. 2379

A Bill for an Act Relating to Firearms.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 134-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Sections 134-6 to 134-9, except section 134-7(f), shall not apply:
- (1) To members of police departments, sheriffs, and law enforcement officers;
  - (2) To members of the armed forces of the State and of the United States and mail carriers while in the performance of their respective duties if those duties require them to be armed;
  - (3) To regularly enrolled members of any organization duly authorized to purchase or receive the weapons from the United States or from the

- State, provided the members are either at, or going to or from, their places of assembly or target practice;
- (4) To persons employed by the State, or subdivisions thereof, or the United States while in the performance of their respective duties or while going to and from their respective places of duty if those duties require them to be armed;
  - (5) To aliens employed by the State, or subdivisions thereof, or the United States while in the performance of their respective duties or while going to and from their respective places of duty if those duties require them to be armed;
  - (6) To police officers on official assignment in Hawaii from any state which by compact permits police officers from Hawaii while on official assignment in that state to carry firearms without registration. The governor of the State or the governor's duly authorized representative may enter into compacts with other states to carry out this section."

SECTION 2. Section 134-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Sections 134-2 and 134-3 shall not apply to such firearms or ammunition that<sup>1</sup> are a part of the official equipment of any federal agency. Section 134-7(f) shall not apply when the persons described in subsection (a) are on duty if those duties require them to be armed."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 24, 1996.)

**Note**

- 1. Should be underscored.

**ACT 61**

S.B. NO. 2784

A Bill for an Act Relating to Environmental Impact Statements.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 343-2, Hawaii Revised Statutes, is amended by amending the definition of "negative declaration" to read:

"['Negative declaration'] 'Finding of no significant impact' means a determination based on an environmental assessment that the subject action will not have a significant effect and, therefore, will not require the preparation of an environmental impact statement."

SECTION 2. Section 343-5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Whenever an agency proposes an action in subsection (a), other than feasibility or planning studies for possible future programs or projects which the agency has not approved, adopted, or funded, or other than the use of state or county

funds for the acquisition of unimproved real property, which is not a specific type of action declared exempt under section 343-6, that agency shall prepare an environmental assessment for such action at the earliest practicable time to determine whether an environmental impact statement shall be required. For environmental assessments for which a [negative declaration] finding of no significant impact is anticipated, a draft environmental assessment shall be made available for public review and comment for a period of thirty days. The office shall inform the public of the availability of the draft environmental assessment for public review and comments pursuant to section 343-3. The agency shall respond in writing to comments received during the review and prepare a final environmental assessment to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of such determination with the office which, in turn, shall publish the agency's determination for the public's information pursuant to section 343-3. The draft and final statements, if required, shall be prepared by the agency and submitted to the office. The draft statement shall be made available for public review and comment through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comments pursuant to section 343-3. The agency shall respond in writing to comments received during the review and prepare a final statement. The office, when requested by the agency, may make a recommendation as to the acceptability of the final statement. The final authority to accept a final statement shall rest with:

- (1) The governor, or the governor's authorized representative, whenever an action proposes the use of state lands or the use of state funds or[,] whenever a state agency proposes an action within the categories in subsection (a); or
- (2) The mayor, or the mayor's authorized representative, of the respective county whenever an action proposes only the use of county lands or county funds.

Acceptance of a required final statement shall be a condition precedent to implementation of the proposed action. Upon acceptance or nonacceptance of the final statement, the governor or mayor, or the governor's or mayor's authorized representative, shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance pursuant to section 343-3.

(c) Whenever an applicant proposes an action specified by subsection (a) which requires approval of an agency, and which is not a specific type of action declared exempt under section 343-6, the agency receiving the request for approval shall prepare an environmental assessment of such proposed action at the earliest practicable time to determine whether an environmental impact statement shall be required. For environmental assessments for which a [negative declaration] finding of no significant impact is anticipated, a draft environmental assessment shall be made available for public review and comment for a period of thirty days. The office shall inform the public of the availability of the draft environmental assessment for public review and comments pursuant to section 343-3. The applicant shall respond in writing to comments received during the review and the agency shall prepare a final environmental assessment to determine whether an environmental impact statement shall be required. A statement shall be required if the agency finds that the proposed action may have a significant effect on the environment. The agency shall file notice of such determination with the office which, in turn, shall publish the agency's determination for the public's information pursuant to section 343-3. The draft and final statements, if required, shall be prepared by the applicant, who shall file these statements with the office. The draft statement shall be made available for



public review and comments through the office for a period of forty-five days. The office shall inform the public of the availability of the draft statement for public review and comments pursuant to section 343-3. The applicant shall respond in writing to comments received during the review and prepare a final statement. The office, when requested by the applicant or agency, may make a recommendation as to the acceptability of the final statement. The authority to accept a final statement shall rest with the agency receiving the request for approval. Acceptance of a required final statement shall be a condition precedent to approval of the request and commencement of proposed action. Upon acceptance or nonacceptance of the final statement, the agency shall file notice of such determination with the office. The office, in turn, shall publish the determination of acceptance or nonacceptance of the final statement [as] pursuant to section 343-3. The agency receiving the request, within thirty days of receipt of the final statement, shall notify the applicant and the office of the acceptance or nonacceptance of the final statement. The final statement shall be deemed to be accepted if the agency fails to accept or not accept the final statement within thirty days after receipt of the final statement; provided that the thirty-day period may be extended at the request of the applicant for a period not to exceed fifteen days.

In any acceptance or nonacceptance, the agency shall provide the applicant with the specific findings and reasons for its determination. An applicant, within sixty days after nonacceptance of a final statement by an agency, may appeal the nonacceptance to the environmental council, which, within thirty days of receipt of the appeal, shall notify the applicant of the council's determination. In any affirmation or reversal of an appealed nonacceptance, the council shall provide the applicant and agency with specific findings and reasons for its determination. The agency shall abide by the council's decision."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 24, 1996.)

## ACT 62

S.B. NO. 3128

A Bill for an Act Relating to Intoxicating Liquor.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that under current law, individuals or organizations that are denied a liquor license may reapply for the license after a one-year waiting period. While the applicant is required to conform to a written application process under section 281-53, Hawaii Revised Statutes, in actuality, those who oppose approval of the license generally bear the real burden throughout this process. For example, residents and neighborhood organizations must organize petition drives and public awareness campaigns each time a previously denied individual or organization resubmits an application.

The purpose of this Act is to alleviate the burden experienced by residents and neighborhood organizations that oppose further applications for liquor licenses. This Act proposes that where the liquor commission has denied a license, an applicant who subsequently reapplies for the liquor license for the same premises shall evidence a substantial change in circumstances that warrants the granting of the

application. The legislature believes that this higher evidentiary standard will result in a fairer process for individuals who oppose further applications that have been denied in the past.

SECTION 2. Section 281-60, Hawaii Revised Statutes, is amended to read as follows:

**“§281-60 Further application.** (a) Except as provided for in section 281-13, if [any] an applicant has at any time been denied or refused a license, no further application from the applicant pertaining to the same premises or building location shall be considered for one year from [such] the denial or refusal.

(b) If an application pertaining to a particular premises or building location is denied, refused, or withdrawn, the next application from any applicant for that premises or building location shall include a report prepared by the applicant evidencing a substantial change in the circumstances that caused the previous denial, refusal, or withdrawal; provided that this section shall not apply to withdrawals which are not based on protests whether or not the protests are filed. The commission shall deny the application at the preliminary hearing unless the applicant submits evidence of a substantial change in the circumstances that previously caused the denial, refusal, or withdrawal of an application pertaining to that premises or building location. The commission may consider the following factors in deciding whether to grant an application pertaining to a premises or building location for which an application has previously been denied, refused, or withdrawn:

- (1) Whether a majority of the registered voters residing within five hundred feet of the nearest point of the premises or building location for which the license is asked, or a majority of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment within five hundred feet of the nearest point of the premises or building location for which the license is asked, no longer oppose the granting of the license;
- (2) Whether plans for the construction, building design, use, or operation of the proposed establishment have been altered such that they will not conflict with the character of the surrounding area. In evaluating the character of an area for the purposes of this section, the commission may consider the following factors:
  - (A) The usual and existing types of business, residential, and recreational uses and activities within the area;
  - (B) The proximity of residential areas;
  - (C) The population density of the area;
  - (D) The typical or ambient noise levels of the area;
  - (E) The motor vehicle traffic volume, congestion, and noise; and
  - (F) Any other factors that the commission finds relevant;
- (3) Whether the applicant is a fit and proper person to have a license; and
- (4) Any other considerations deemed by the commission to affect the matter of the application, the issuance, or the exercise of the license applied for.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved April 24, 1996.)

## ACT 63

S.B. NO. 2518

A Bill for an Act Relating to Financial Services Loan Companies.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 412:1-103, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Except as otherwise provided in this section, any Hawaii financial institution which on July 1, 1993, is not in compliance with any of the provisions of [sections] section 412:3-104, 412:3-106, 412:3-209, 412:3-500, or 412:4-104], or 412:9-101 of this chapter] shall within one-hundred-eighty days after July 1, 1993, inform the commissioner in writing as to the extent and nature of its noncompliance and shall simultaneously file with the commissioner a plan for achieving full compliance with such provisions. The commissioner shall thereafter review and consider the circumstances of the Hawaii financial institution and shall by order establish a date by which the institution shall fully comply, which shall not in any event be later than the third anniversary of July 1, 1993, unless otherwise provided herein or by federal law, or unless extended by the commissioner.”

SECTION 2. Section 412:3-104, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-104 Qualification<sup>1</sup> of directors.** Except for nondepository financial services loan companies, the board of directors of every Hawaii financial institution shall at all times consist of at least five directors, of whom at least three shall be residents of this State at the time of their election and while holding office. If any resident director ceases to be a resident of this State or ceases to be a director, and such circumstance causes the number of resident directors on the board to be fewer than three, another resident director shall be immediately elected or appointed in accordance with the institution's bylaws. [The] Except for nondepository financial services loan companies, the board of directors of any financial institution, which is a wholly-owned subsidiary of a holding company incorporated in another state shall at all times consist of at least five directors, of whom at least one shall be a resident of this State at the time of election and while on the board.”

SECTION 3. Section 412:3-111, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-111 Maintenance of books and records.** (a) Every Hawaii financial institution shall keep its books and records in a safe and secure place in this State. The commissioner may authorize such records to be maintained outside [of] this State.

(b) A nondepository financial services loan company which is not incorporated in this State shall maintain at its principal office in this State all books and records relevant to the transaction of its business in this State for the purpose of examination by the commissioner under section 412:2-200; provided that the commissioner may approve in writing specific books and records which may be maintained outside this State. For the purpose of an examination under section 412:2-200, specified books and records maintained outside this State shall be made available for review by the commissioner within ten business days after the date that a written request for the specified books and records is made by the commissioner, or at such subsequent time as approved in writing by the commissioner. The commissioner

may impose an administrative fine on a nondepository financial services loan company which fails to make available any specified books or records as requested by the commissioner under this subsection. The fine shall not exceed \$1,000 for each day that any specified books or records are not made available as requested by the commissioner. The fine shall be recovered under section 412:2-609.

[(b)] (c) A computer service bureau or data processing service may be utilized to process data without obtaining the commissioner's authorization, provided that the final books and records are maintained in accordance with subsection (a).

[(c)] (d) The books and records of the Hawaii financial institution may be maintained as originals or photocopies, on microfilm or microfiche, on computer disks or tapes, or similar forms, provided that they are readily accessible and may be easily examined.

[(d)] (e) Records, statements, or reports required or authorized by this chapter may be in a spoken language other than English provided that English translations are also maintained.

[(e)] (f) No Hawaii financial institution shall be required to preserve or keep its records or files for a period longer than six years, except as specified in subsection [(f).] (g).

[(f)] (g) The following records or files of a Hawaii financial institution shall not be destroyed except in accordance with rules of the commissioner promulgated under chapter 91:

- (1) Minute books of meetings of shareholders, directors, and executive committee;
- (2) Capital stock ledger; and
- (3) General ledgers and trust ledgers.

These records and files may be maintained in original form or in the form of a photographic, photostatic, microfilm, microcard, miniature photographic, or other reproduction by a durable medium for reproducing the original.

[(g)] (h) No liability shall accrue against any Hawaii financial institution for its destruction of its records or files in accordance with this section or the rules adopted hereunder. A showing by the financial institution that its records or files have been destroyed in accordance with this section or rules adopted hereunder shall be sufficient excuse for the failure to produce them."

SECTION 4. Section 412:3-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any corporation [incorporated in this State] or any person intending to form a corporation incorporated in this State may file an application with the commissioner for a license to engage in the business of a nondepository financial services loan company."

SECTION 5. Section 412:3-306, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every nondepository financial services loan company [existing or organized] conducting business under the laws of this State shall at all times have paid-in capital and surplus of not less than \$500,000."

SECTION 6. Section 412:9-101, Hawaii Revised Statutes, is amended to read as follows:

**“§412:9-101 Necessity for financial services loan company license.** Except as expressly permitted by federal law or this chapter or section 415-106(c), no person shall engage in any activity for which a license to operate as a financial services loan company is required by this chapter, including without limitation, making loans and extensions of credit where the interest charged, contracted for, or received is in excess of rates permitted by law other than this article, the use of the term “financial services loan company”, or the exercise of such other powers or privileges restricted to financial services loan companies under applicable law unless it is a corporation incorporated in this State and has such a license[.]; provided that a nondepository financial services loan company shall not be required to be incorporated in this State.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved May 1, 1996.)

#### Note

1. Prior to amendment “qualifications” appeared here.

## ACT 64

S.B. NO. 2538

A Bill for an Act Relating to Unfair and Deceptive Practices.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 481B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§481B- Offers of gifts or prizes; unlawful.** (a) It shall be an unlawful practice under this chapter for any person to enforce or attempt to enforce an agreement to purchase, lease, or rent a consumer product if the offer to sell, lease, or rent was conducted in a manner not in compliance with the requirements of this chapter.

(b) It shall be an unlawful practice under this chapter for any person to offer a gift, prize, or award by means of written notice sent through the mail or by telephone with the intent to sell, lease, or rent a consumer product, or to initiate the sale, lease, or rental of a consumer product when, at the time of the offer, the consumer product and all the material terms of the sale, lease, or rental transaction, including the price, handling, shipping, delivery, or any other fee, are not clearly and conspicuously disclosed.

(c) It shall be an unlawful practice for any person to offer a gift, prize, or award by means of written notice sent through the mail or by telephone with the intent to receive a payment of any money when, at the time of the offer, all of the material terms of the transaction, including handling, shipping, delivery, or any other fee, are not clearly and conspicuously disclosed and the consumer is requested to:

- (1) Further the transaction by calling a 900 number or “pay per call”; or
  - (2) Send payment of any money to receive or redeem the prize.
- (d) Any offer of a prize made by means of written notice sent through the mail or by telephone shall include:

- (1) Information on the odds of being able to receive the prize or if the odds are not calculable in advance, the factors used in calculating the odds;

- (2) A statement that no purchase or payment is required to win a prize or to participate in a prize promotion; and
- (3) Instructions on how to participate without purchase or payment including an address or toll-free telephone number to which a consumer may write or call for information on how to participate."

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved May 1, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 65**

S.B. NO. 2637

A Bill for an Act Relating to Insurance Companies.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:6-311, Hawaii Revised Statutes, is amended to read as follows:

**"§431:6-311 Real property owned.** (a) An insurer other than a life insurer may own and invest, or have invested in its home office and branch office buildings, any of its funds in an aggregate amount not to exceed twenty per cent of its admitted assets unless approved by the commissioner, or if a mutual or reciprocal insurer, not to exceed twenty per cent of its admitted assets nor an amount as would reduce its surplus, exclusive of such investment, below the minimum required surplus for the class, or combination of classes, of insurance authorized, unless approved by the commissioner. A life insurer may own and invest, or have invested in its home office building and branch office buildings, any of its funds in an aggregate amount not to exceed twenty per cent of its admitted assets, or fifty per cent of the excess of its admitted assets over its liabilities, other than capital stock if a stock life insurer, whichever is the lesser amount. The home office or branch office buildings may be constructed upon leasehold estates. However, if a life insurer has been licensed less than five years, a prior approval from the commissioner shall be required before investment may be made in home office or branch office buildings.

(b) An insurer may invest any of its funds, in an aggregate amount not exceeding ten per cent of its assets, in real property acquired for the production of income under the following terms and conditions:

- (1) The investment in any single parcel of real estate shall not exceed five per cent of its admitted assets;
- (2) The investment shall produce sufficient income to amortize any loan secured by a mortgage on the real property;
- (3) If any improvements exist on or are to be constructed on the real property for lease to lessees, the improvements shall remain on the property during the period of the lease, with provisions when the improvements are put upon the property at the cost of the lessee that at the termination of the lease the ownership of the improvements, free of liens, shall vest in the owner of the real estate; and
- (4) During the term of the lease the tenant shall pay all taxes and assessments levied on or against the real estate, including improvements,

shall keep and maintain the improvements in good repair, and shall provide and maintain for the benefit of the lessor fire insurance on the improvements in an amount at least equal to the insurable value of the improvements, or at least equal to the amount invested by the lessor in the real estate, whichever is less.

[(b)] (c) An insurer may invest any of its funds, in an aggregate amount not exceeding thirty per cent of its assets in real property including [those] the realty set forth in [subsection] subsections (a)[,] and (b),<sup>1</sup> for realty acquired for the purpose of leasing the same to any person for a period of not less than twenty years, or in real property already leased for an unexpired period of not less than fifteen years of an original period of not less than twenty years, under the following terms and conditions:

- (1) The lessee, at the lessee's own cost, shall erect, or have already erected, thereon free of liens a building or other improvements costing an amount at least equal to the value of the real estate exclusive of improvements; but if the lease be entered into simultaneously with the purchase of the real estate, the lessor may agree to erect the improvements on the real estate;
- (2) The improvements shall remain on the property during the period of the lease, with provisions when the improvements are put upon the property at the cost of the lessee that at the termination of the lease the ownership of the improvements, free of liens, shall vest in the owner of the real estate;
- (3) The lessee, during the term of the lease, or the unexpired period of the lease if the property is bought subject to the lease, shall pay to the owner of the real estate rent in an amount as will enable the owner to amortize the investment at or before the normal termination of the lease, or at or before the end of fifty years should the lease, or the unexpired period of the lease, be for a longer period than fifty years; and
- (4) During the term of the lease the tenant shall pay all taxes and assessments levied on or against the real estate, including improvements, shall keep and maintain the improvements in good repair, and shall provide and maintain for the benefit of the lessor fire insurance on the improvements in an amount at least equal to the insurable value of the improvements, or at least equal to the amount invested by the lessor in the real estate, whichever is less.

[(c)] (d) Real property acquired pursuant to subsection [(b)] (c) shall not be treated as an investment unless and until the required improvements have been constructed and the lease agreement entered into, and the amount to which the real property shall be treated as an investment shall not exceed the amount actually invested reduced each year in the amounts as will suffice to amortize completely the investment at the normal termination of the lease or at the end of fifty years should the term of the lease, or the unexpired period of the lease, be for a longer period than fifty years.

[(d)] (e) An insurer may own real property acquired in satisfaction or on account of loans, mortgages, liens, judgments, or other debts previously owing to the insurer in the course of its business, and may invest or have invested in an aggregate amount not exceeding three per cent of its assets in other real property, and in the repair, alteration, furnishing, or improvement thereof, as follows only:

- (1) Other real property requisite for its accommodation in the convenient transaction of its business if approved by the commissioner;
- (2) Real property acquired by gift or devise;

- (3) Real property acquired in exchange for real property owned by it. If necessary in order to consummate an exchange, the insurer may put up cash in an amount not to exceed twenty per cent of the fair value of its real property to be so exchanged, in addition to the property;
- (4) Real property acquired through a lawful merger or consolidation with it of another insurer and not required for the purposes specified in subsection (a) and subsection [(b)(1);] (c)(1); or
- (5) Upon approval of the commissioner, in real property and equipment incident to real property, requisite or desirable for the protection or enhancement of the value of other real property owned by the insurer."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 1996.

(Approved May 1, 1996.)

Note

- 1. Should be underscored.

ACT 66

S.B. NO. 2746

A Bill for an Act Relating to Motor Vehicle Advertising.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 437-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) False, deceptive, or misleading advertising.
- [(1) False advertising by a motor vehicle dealer shall be punishable as provided by statute or ordinance.
- (2)] (1) Terms that are false, deceptive, or misleading regarding pricing shall not be used in any retail motor vehicle advertising, including but not limited to the following terms:
  - (A) “Wholesale;”
  - (B) “Free;”
  - [(C) “Cost,” as in but not limited to “at cost,” “below cost,” a certain number of dollars “off cost,” or other terms of similar import;
  - (D)] (C) “Invoice price,” “manufacturer’s invoice price,” “factory invoice price,” “dealer invoice price,” a certain number of dollars “over invoice,” or other terms of [similar] equivalent import;
  - [(E)] (D) “Fleet,” in connection with defining prices or a sale;
  - [(F)] (E) “Factory sale,” “manufacturer’s sale,” “factory authorized sale,” “factory outlet,” or other terms of [similar] equivalent import; and
  - [(G)] (F) “No credit rejected,” “everyone financed,” or terms of [similar] equivalent import.
- [(3)] (2) Any advertised product must be available on the stated terms from inventory, or by order with delivery within a reasonable period of time.



- [(4)] (3) Where a discount or savings is featured, whether by price comparison of dollars, fractions, percentages, or otherwise, the discount or savings must be calculated with reference to the manufacturer's suggested retail price in accordance with the Monroney Act, 15 U.S.C. §1231, et seq., as amended.
- [(5)] (4) If the term "guarantee" or words of [similar] equivalent import are used in advertising, the guarantee, and all of its material terms, must be in writing and made part of the contract of sale of any motor vehicle sold by the seller during the period covered by the advertisement.
- [(6)] (5) No motor vehicle shall be advertised or offered for sale or exchange or offered to be purchased under the representation that it is a new motor vehicle, unless the motor vehicle conforms to the definition of "new motor vehicle" contained in section 437-1.1."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 1, 1996.)

## ACT 67

S.B. NO. 2962

A Bill for an Act Relating to Government Regulation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to delete unnecessary statutes that deal with government regulation.

SECTION 2. Section 445-90, Hawaii Revised Statutes, is amended by deleting the definition of "restaurant".

[ "'Restaurant" means a building in which the principal business is the furnishing of meals for pay." ]

SECTION 3. Section 445-93, Hawaii Revised Statutes, is repealed.

SECTION 4. Chapter 286, part V, Hawaii Revised Statutes, is repealed.

SECTION 5. Chapter 445, part IIA, Hawaii Revised Statutes, is repealed.

SECTION 6. Chapter 445, part VIII, Hawaii Revised Statutes, is repealed.

SECTION 7. Chapter 445, part IX, Hawaii Revised Statutes, is repealed.

SECTION 8. Statutory material to be repealed is bracketed.<sup>1</sup>

SECTION 9. This Act shall take effect upon its approval.

(Approved May 1, 1996.)

### Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 68

H.B. NO. 3461

A Bill for an Act Making an Emergency Federal Fund Appropriation Increase for Health Care Payments.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with Section 9 of Article VII of the Constitution of the State of Hawaii.

SECTION 2. Act 218, Session Laws of Hawaii 1995, appropriated a certain designated sum to the department of human services to provide funds for medical assistance payments under the Med-QUEST division for the fiscal period beginning July 1, 1995, and ending June 30, 1996.

The medical assistance program, also known as the Hawaii QUEST and the Medicaid Program, is anticipating the new federal block grant. With this new federal block grant formula, the department needs to increase its federal ceiling in order to meet its fiscal obligation to provide health and health-related services to the Hawaii QUEST and Medicaid recipients.

SECTION 3. There is appropriated out of the federal funds of the State of Hawaii the sum of \$96,037,955 or so much thereof as may be necessary for fiscal year 1995-1996, to be used for health care payments.

SECTION 4. The sum appropriated shall be expended by the department of human services for the purposes of this Act. Any unexpended or unencumbered balances of any appropriation made by this Act as of the close of business on June 30, 1996 shall lapse into the appropriate fund.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 6, 1996.)

ACT 69

H.B. NO. 3348

A Bill for an Act Making an Emergency Appropriation for Medicaid Investigations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the Constitution of the State of Hawaii.

SECTION 2. Act 218, Session Laws of Hawaii 1995, by item K-18 of section 3, appropriated \$184,296 in special funds to the department of the attorney general to carry out its fraud and patient abuse duties as required under section 28-91, Hawaii Revised Statutes, for the fiscal period beginning July 1, 1995, and ending June 30, 1996.

A critical funding emergency exists. Act 15, Special Session Laws of Hawaii 1995, established the medicaid investigations recovery fund to replace the general fund as a source of funding for medicaid investigations. Employee fringe benefits formerly paid by the state's general fund are now charged to the special fund, but

there was no additional appropriation provided. In addition, lease rent and other investigative expenses must be paid. Without additional appropriations for the special fund, the department of the attorney general will be unable to meet its fiscal obligations to investigate and prosecute health care fraud and patient abuse.

The purpose of this Act is to appropriate additional special fund moneys to allow the department of the attorney general to meet its fiscal obligations under section 28-91, Hawaii Revised Statutes, for fiscal year 1995-1996.

SECTION 3. There is appropriated out of the medicaid investigations recovery fund of the State of Hawaii the sum of \$77,926 or so much thereof as may be necessary for fiscal year 1995-1996 for the purposes of the fund.

SECTION 4. The sum appropriated shall be expended by the department of the attorney general.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 9, 1996.)

## ACT 70

H.B. NO. 3361

A Bill for an Act Making an Appropriation for the Hawaii Film Facility.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the constitution of the State of Hawaii.

SECTION 2. Act 218, Session Laws of Hawaii 1995, appropriated non-general funds for the Hawaii film facility special fund, commerce and industry (BED 102), for fiscal year 1995-1996. Report No. 91-10 issued by the office of the legislative auditor, relating to special and revolving funds, concluded that for a special or revolving fund to continue to be considered appropriate, the fund should:

- (1) Continue to serve its original purpose;
- (2) Have a clear link between its benefits and charges; and
- (3) Be financially self-sustaining.

While the fund has exhibited consistency with these criteria, there exists no legislated mechanism to allow for the intended and timely implementation of the purposes of these funds once a fiscal year has begun.

To facilitate appropriate implementation of the Hawaii film studio program for fiscal year 1995-1996, the special fund appropriation and authorization provided in this Act reflect additional available receipts and an attendant commitment of increased program funding collateral to the receipt of revenues.

SECTION 3. There is appropriated and authorized out of the Hawaii film facility special fund, commerce and industry (BED 102), the sum of \$66,500 or so much thereof as may be necessary for fiscal year 1995-1996 to facilitate the implementation of the Hawaii film studio program; provided that this sum shall be in addition to the operating appropriations made for the same program by Act 218, Session Laws of Hawaii 1995, or by any other act.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

## ACT 71

SECTION 4. Any unexpended or unencumbered balance of the appropriation made by this Act as of the close of business on June 30, 1996, shall lapse into the Hawaii film studio facility special fund.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 9, 1996.)

## ACT 71

H.B. NO. 3369

A Bill for an Act Relating to Procurement.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 103D-104, Hawaii Revised Statutes, is amended by amending the definition of "professional services" to read as follows:

""Professional services" means those services within the scope of the practice of architecture, landscape architecture, professional engineering, land surveying, real property appraisal, law, medicine, accounting, dentistry, public finance bond underwriting, public finance bond investment banking, or any other practice defined as professional by the laws of this State or the professional and scientific occupation series contained in the United States Office of Personnel Management's Qualifications Standards Handbook."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 9, 1996.)

## ACT 72

H.B. NO. 3439

A Bill for an Act Making an Emergency Appropriation for the Operating Expenses of the Department of Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is an emergency measure recommended by the governor for immediate passage in accordance with article VII, section 9, of the constitution of the State of Hawaii.

SECTION 2. Act 218, Session Laws of Hawaii 1995, appropriated a designated sum to the department of education to provide funds for electricity under the school support program (EDN 400) for the fiscal year beginning July 1, 1995, and ending June 30, 1996.

A critical funding emergency exists. The schools will expend all funds appropriated for electricity before the end of the current fiscal year. The extent of the increase in costs for electricity and other utilities was anticipated and requested but not funded by the legislature. To prevent the reduction or discontinuance of educational services to students due to lack of electricity in the schools, the additional funds are urgently needed.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,284,156 or so much thereof as may be necessary for fiscal year 1995-1996 for school electricity payments.

SECTION 4. The sum appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 9, 1996.)

**ACT 73**

H.B. NO. 3454

A Bill for an Act Making Emergency Appropriations for Child Foster Care Payments.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with Section 9 of Article VII of the Constitution of the State of Hawaii.

SECTION 2. Act 218, Session Laws of Hawaii 1995, appropriated a certain designated sum to the department of human services to provide funds for child foster care payments under the family and adult services division for the fiscal period beginning July 1, 1995, and ending June 30, 1996.

A critical funding emergency exists. The foster care payment program will expend all appropriated funds before the end of the current fiscal year and the department will be unable to meet its fiscal obligation to provide foster board and board-related costs for children needing out-of-home care.

SECTION 3. There is appropriated out of the federal funds of the State of Hawaii the sum of \$880,000, or so much thereof as may be necessary for fiscal year 1995-1996, to be used for board and board-related costs for children in foster care.

SECTION 4. The sum appropriated shall be expended by the department of human services for the purposes of this Act. Any unexpended or unencumbered balances of any appropriation made by this Act as of the close of business on June 30, 1996 shall lapse into the appropriate fund.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 9, 1996.)

**ACT 74**

H.B. NO. 3520

A Bill for an Act Making an Emergency Appropriation for Unemployment Benefits to Former State Employees.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the Governor for immediate passage in accordance with section 9 of Article VII of the Constitution of the State of Hawaii.

SECTION 2. Act 218, Session Laws of Hawaii 1995, appropriated \$4,501,534 to the Department of Labor and Industrial Relations for unemployment benefits to former state employees as required under Chapter 383, Hawaii Revised Statutes, for the fiscal period beginning July 1, 1995 and ending June 30, 1996.

A critical funding emergency exists. It is projected that there will be a shortfall by February 1, 1996 in the state general fund appropriation for unemployment benefits, and the department will be unable to meet its fiscal obligation to provide unemployment benefits to former state employees.

The purpose of this Act is to appropriate moneys to allow the State to meet its fiscal obligations under Chapter 383, Hawaii Revised Statutes.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$4,500,000, or so much thereof as may be necessary for fiscal year 1995-1996, to be used exclusively to cover unemployment compensation claims of former state employees as required by Chapter 383, Hawaii Revised Statutes.

SECTION 4. The sum appropriated shall be expended by the Department of Labor and Industrial Relations.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 9, 1996.)

## ACT 75

S.B. NO. 2795

A Bill for an Act Making an Emergency Appropriation for the Department of Health, Child and Adolescent Mental Health Division.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the constitution of the State of Hawaii.

SECTION 2. Act 218, Session Laws of Hawaii 1995, appropriated a certain designated sum to the department of health to provide funds for the child and adolescent mental health program for the fiscal period beginning July 1, 1995, and ending June 30, 1996.

A critical funding emergency exists. The program will expend all appropriated funds before the end of the current fiscal year and the department will be unable to meet its fiscal obligation to provide services to emotionally disturbed children and adolescents. The increase in case referrals and court-directed placements is the primary contributing factor to this financial situation.

The purpose of this Act is to appropriate or authorize moneys to prevent the reduction or discontinuance of payments for services to emotionally disturbed children and adolescents and to respond to the requirements of the Felix v. Waihee consent decree.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$5,902,756, or so much thereof as may be necessary for fiscal year 1995-1996 to be used for services provided to emotionally disturbed children and adolescents.

SECTION 4. The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 9, 1996.)

**ACT 76****H.B. NO. 3425**

A Bill for an Act Making an Emergency Appropriation Out of the Special Fund for the Administration of Workers' Compensation Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with article VII, section 9, of the Constitution of the State of Hawaii.

SECTION 2. Act 234, Session Laws of Hawaii 1995, designated sources of revenues to be deposited into a special fund to provide funds for administering workers' compensation insurance for the fiscal period beginning July 1, 1995, and ending June 30, 1996.

A critical funding emergency exists. There is no appropriation within Act 234 or any other act to authorize the insurance commissioner to expend moneys in the special fund. Without the necessary appropriation language, the commissioner cannot properly and adequately administer the workers' compensation insurance program.

The purpose of this Act is to authorize the spending of moneys in the special fund to prevent the reduction or discontinuance of proper and adequate administration of the workers' compensation insurance program.

SECTION 3. There is appropriated out of the workers' compensation insurance special fund the sum of \$150,000 or so much thereof as may be necessary for fiscal year 1995-1996 for administering the workers' compensation insurance program of the department of commerce and consumer affairs.

SECTION 4. The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 10, 1996.)

**ACT 77****H.B. NO. 3540**

A Bill for an Act Relating to Public Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with article VII, section 9, of the constitution of the State of Hawaii.

SECTION 2. The purpose of this Act is to accelerate the timetable for the department of public safety to place women inmates in a renovated Olomana cottage. By appropriating construction funds for fiscal year 1995-1996, the completion date for the renovation will be the end of 1996 instead of 1997.

SECTION 3. The director of finance is authorized to issue general obligation bonds in the sum of \$5,068,000, or so much thereof as may be necessary, and the same sum, or so much thereof as may be necessary, is appropriated for fiscal year 1995-1996 for the following project:

Women's community correctional center, phase III, increment I, Oahu	
Construction for the women's community correctional center, phase III, increment I. Project to include renovations to Olomana cottage to convert facility for use by adult females.	
Construction	\$5,068,000
Total funding	\$5,068,000

SECTION 4. The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 10, 1996.)

## ACT 78

H.B. NO. 3548

A Bill for an Act Making an Emergency Appropriation for Public Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act is recommended by the governor for immediate passage in accordance with section 9 of article VII of the constitution of the State of Hawaii.

SECTION 2. Act 218, Session Laws of Hawaii 1995, appropriated a certain designated sum to the department of public safety to provide funds for the operations of its programs for the fiscal period beginning July 1, 1995, and ending June 30, 1996.

A critical funding emergency exists. Various programs will expend all appropriated funds before the end of the current fiscal year and the department will be unable to meet its fiscal obligation to provide for the health and safety of the public, staff, and clients. Overcrowding and increasing operating expenses are the primary contributing factors to this financial situation.

The purpose of this Act is to appropriate moneys to prevent the shutdown of activities at our correctional facilities and the possible filing of lawsuits.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,463,750 or so much thereof as may be necessary for fiscal year 1995-1996 for the sole purpose of reimbursing the various programs of the department of public safety for funds taken from such programs and expended to transfer three hundred Hawaii inmates to correctional facilities in Texas.

SECTION 4. The sum appropriated shall be expended by the department of public safety for the purposes of this Act.



SECTION 5. This Act shall take effect upon its approval.

(Approved May 10, 1996.)

## ACT 79

S.B. NO. 2836

A Bill for an Act Relating to the Employees' Retirement System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 88-122, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The actuarial valuations made for years ending June 30, [1995, and June 30, 1996,] 1994, to June 30, 2000, shall be based on an eight per cent investment yield rate, assumed salary increases of [six and one-half] four per cent, and tables and factors adopted by the board or legislature for actuarial valuations of the system, subject to recommendations made by the actuary appointed under section 88-30.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 10, 1996.)

## ACT 80

H.B. NO. 3341

A Bill for an Act Relating to Salary Pay Periods of Public Officers and Employees.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 78-13, Hawaii Revised Statutes, is amended to read as follows:

“**§78-13 Salary periods.** Unless otherwise provided by law, all officers and employees shall be paid at least semimonthly except that substitute teachers, part-time hourly rated teachers of adult and evening classes, and other part-time, intermittent, or casual employees may be paid once a month[.] and that the governor, upon reasonable notice and upon determination that the payroll payment basis should be converted from predicted payroll to after-the-fact payroll, may allow a one-time once a month payroll payment to all public officers and employees to effect a conversion to after-the-fact payroll; provided that the conversion time schedule shall occur over a one-year period.”

SECTION 2. The department of human resources development shall establish a program to assist public employees who experience financial hardship due to this Act. The department of human resources development shall submit a report to the legislature not later than twenty days prior to the convening of the regular session of 1997 detailing the program's activities.

## ACT 81

SECTION 3. This Act shall not affect the retirement benefit calculation of any public employee who retires after the effective date of this Act.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 5, 1996.)

## ACT 81

S.B. NO. 2777

A Bill for an Act Relating to Water Pollution Control.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 342D-54, Hawaii Revised Statutes, is amended to read as follows:

**“§342D-54 [Treatment works; construction grants; advances;] Wastewater treatment works; financial assistance; state revolving fund.** (a) The director may make grants or loans, or both, to any state or county agency of state funds as authorized and appropriated by the legislature for the construction of necessary wastewater treatment works and for other projects intended for wastewater reclamation or waste management by other than conventional means to prevent or to control the discharge of untreated or inadequately treated sewage or other waste into any state waters; provided that the director may allocate grants or loans, or both, to projects on the basis of existing and future growth patterns. The director shall coordinate the granting of state funds with available federal funds for the same purpose. No grant or loan shall be made for any project unless:

- (1) The project conforms with the state water pollution control plan;
- (2) The project is certified by the director as being entitled to priority over other eligible projects on the basis of financial as well as water pollution control needs;
- (3) In the case of wastewater treatment works, the application for the grant or loan, or both, contains the following:
  - (A) Reasonable assurances that the applicant will provide for the proper and efficient operation and maintenance of the wastewater treatment works after its construction; and
  - (B) Reasonable assurances by the applicant that an impact fee structure will be instituted to insure that new developments pay their appropriate share of the costs of the wastewater treatment works, as determined by the counties; and
- (4) The state or county agency receiving these state funds requires the installation of low flow water fixtures and devices for faucets, hose bibbs, showerheads, urinals, and toilets in all new construction projects, [which] and the fixtures and devices shall be approved by the International Association of Plumbing and Mechanical Officials and shall comply with applicable American National Standards Institute standards and [such] other standards as may be required by the respective county for all new residential and public buildings[, beginning December 31, 1992].

(b) If the federal funds are not immediately available, the director may advance the federal share of the planning and design cost to the county or state agency, subject to the following provisions:

- (1) The director shall enter into a contract with the applicant specifying the conditions of the advance; and
- (2) The advances made by the State to the county or state agency shall be reimbursed to the State immediately upon the receipt from the federal government of the advanced funds or within one year after the completion of project construction, whichever is earlier.

If federal grant funds are available, the applicant shall be required to pay sixty per cent of the nonfederal share of the estimated reasonable cost of the approved wastewater treatment works as defined by 33 United States Code section 1251 et seq. If federal grant funds are not available, the director may make grants or loans, or both, up to one hundred per cent of the estimated cost of the project.

(c) There is established in the state treasury a fund to be known as the water pollution control revolving fund solely for the purpose of [receiving federal and state funds to provide] providing financial assistance to governmental agencies for the planning, design, and construction of wastewater treatment works owned by a governmental agency [in accordance with Title VI of the Water Quality Act of 1987, Public Law 100-4], and [implementation of management] for programs [established] and plans under [sections 319 and 320 of the Water Quality Act of 1987;] 33 United States Code section 1383(c); provided that:

- (1) The director may enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept capitalization grants that shall be deposited into the revolving fund;
- (2) The financial assistance that may be provided to governmental agencies from federal funds and matching state funds in the revolving fund shall be limited to [loans, loan guarantees, and bond guarantees.] those projects and types of assistance allowed under 33 United States Code section 1383. Federal funds shall be kept in a separate account or series of accounts from the account or accounts for state funds in the revolving fund;
- (3) The revolving fund shall be established, maintained, and credited with loan and other financial assistance repayments and investment income, and the fund balance shall be available in perpetuity for its stated purpose;
- (4) The director may make and condition loans from the fund as required by state or federal law. These loans shall:
  - (A) Be made at or below market interest rates;
  - (B) Require annual payments of principal and interest with repayment commencing not later than one year after completion of the project for which the loan is made; and
  - (C) Be fully amortized not later than twenty years after project completion;
- (5) The director shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for appropriate accounting periods of payments and disbursements received and made by the revolving fund and for fund balances at the beginning and end of the accounting period;
- (6) The director may enter into any necessary or required agreement and give or make any necessary or required assurance or certification with any person to receive payments or grants or to make or provide any financial assistance in conformance with [Title VI of the Water Quality Act of 1987;] 33 United States Code sections 1381 to 1387;

- (7) No loan from the revolving fund shall be made unless the loan recipient establishes a dedicated source of revenue for the repayment of the [loans;] loan;
- (8) The director [may] shall adopt rules pursuant to chapter 91 [necessary] for the purposes of this section, including[, ] but not limited to[, ] fees for loans and other financial assistance, and penalties for default of loan and other financial assistance repayments; [and]
- (9) If established, fees shall cover the costs of current activities including the issuance of loans and other financial assistance, monitoring of loans and other financial assistance repayments and conditions, technical review of the planning and design documents, monitoring of construction activities, conducting operation and maintenance inspections of wastewater facilities, and other activities of the revolving fund pursuant to 33 United States Code sections 1381 to 1387; all moneys collected as fees shall be deposited into an administrative expense account or accounts as needed to comply with 33 United States Code section 1383(d)(7) and shall be used exclusively to support the activities of the revolving fund; and
- [(9)] (10) Not less than twenty days prior to the convening of each regular session of the legislature, the director shall submit a report to the legislature of all grants or loans made from the revolving fund during the last completed fiscal year, and during the first three months of the fiscal year in progress. For each grant[, ] or loan, the report shall include:
  - (A) The name of the recipient;
  - (B) The effective date of the grant[, ] or loan;
  - (C) The amount provided; and
  - (D) The intended or actual use of the funds.

(d) Nothing in this section shall restrict the director's authority to make grants or loans, or both, to wastewater treatment works or projects granted waivers under [section 301(h) of the Federal Water Pollution Control Act (33 U.S.C. section 1311(h)).] 33 United States Code section 1311(h).

(e) The department of budget and finance, with the approval of the governor, is authorized to issue revenue bonds at such times and in such amount or amounts, not to exceed \$250,000,000 in aggregate principal, as may be necessary to carry out the purposes of this section. All such bonds shall be issued pursuant to part III of chapter 39, except as provided in this section. The resolution or certificate providing for the issuance of the bonds may provide that all or part of the proceeds of the bonds shall be deposited in the revolving fund, where the proceeds may be held and invested in a separate account or accounts until used in accordance with subsection (c). For the purposes of providing a source of revenue or security for these bonds, the director may pledge funds deposited or to be deposited in the revolving fund to the payment or security of the bonds or the loans, and the pledge shall constitute a lien and security interest on the funds to the extent and with the priority set forth in the document establishing the pledge, without physical delivery, recording, or other further act."

SECTION 2. All grants, loans, agreements, and acts which were previously made under section 342D-54, Hawaii Revised Statutes, are hereby preserved.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 6, 1996.)

## ACT 82

S.B. NO. 1305

A Bill for an Act Relating to Environmental Protection.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 342J, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

### **“PART . USED OIL AND USED OIL FUEL**

**§342J-A Definitions.** Except as expressly defined in this part, terms that are defined in section 342J-2 have the same meanings when used in this part.

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any used oil or used oil fuel into or on any land or water so that the used oil, used oil fuel, or any constituent thereof may enter the environment, be emitted into the air, or discharged into any waters, including ground waters.

“Facility” means all contiguous land and structures, other appurtenances, and improvements on the land used for the handling of used oil or used oil fuel.

“Generator” means any person, by site, whose act or process produces used oil or used oil fuel or whose act first causes used oil or used oil fuel to become subject to regulation.

“Operator” means the person responsible for the overall operation of a facility as defined in this section.

“Owner” means the person who owns a facility or part of a facility as defined in this section.

“Permit” means written authorization from the director for a person to engage in the handling of used oil or used oil fuel.

“Pollution” means pollution by mismanagement or mishandling of used oil or used oil fuel.

“Specification fuel” means recycled oil which meets specific standards that are set by the director. These standards, at a minimum, shall comply with those set by the federal Environmental Protection Agency for specification fuel.

“Storage” means the containment of used oil or used oil fuel, temporarily or for a period of time, in a manner which does not constitute disposal.

“Transporter” means any person who transports used oil or used oil fuel, any person who collects used oil or used oil fuel from more than one generator and transports the collected used oil or used oil fuel, and owners and operators of used oil or used oil fuel transfer facilities.

“Treatment” means any method, technique, or process designed to change the physical, chemical, or biological character or composition of any used oil or used oil fuel.

“Used oil” means any oil (regardless of whether it is a hazardous waste) that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

**§342J-B Standards for persons who deal with used oil or used oil fuel.** (a) The director may establish, by rule, standards applicable to persons who generate, transport, treat, store, dispose, process, re-refine, burn (including burning for pur-

poses of energy recovery), recycle, distribute, market, or otherwise handle used oil or used oil fuel, regardless of whether the used oil or used oil fuel is a hazardous waste.

(b) No new oil, used oil, or recycled oil shall be discharged or caused or allowed to enter into the sewers, drainage systems, surface or ground waters, watercourse, marine waters, or onto the ground. The prohibition shall not apply to inadvertent, normal discharges from vehicles and equipment, or maintenance and repair activities associated with vehicles; provided that appropriate measures are taken to minimize releases. Appropriate measures include, but are not limited to, use of drip pans, institution of structural catchment systems, use of absorbent materials, and other similar measures.

**§342J-C Permit required.** No person shall transport, market, or recycle used oil or used oil fuel without first obtaining a permit from the department. The director may require any person who generates and burns the person's own used oil as specification fuel to notify the department of the person's activity.

**§342J-D Permits; procedures for.** (a) An application for any permit required under this part shall be in a form prescribed by the director.

(b) The department may require that applications for the permits shall be accompanied by plans, specifications, and the other information that it deems necessary in order for it to determine whether the proposed installation, alteration, or use will be in accord with applicable rules and standards.

(c) The director shall issue a permit for any term, not exceeding five years, if the director determines that it will be in the public interest; provided that the permit may be subject to reasonable conditions that the director may prescribe. The director, on application, shall renew a permit from time to time for a term not exceeding five years if the director determines that it is in the public interest. The director shall not deny an application for the issuance or renewal of a permit without affording the applicant an opportunity for a hearing in accordance with chapter 91.

The director, on the director's own motion or the application of any person, may modify, suspend, or revoke any permit if, after affording the permittee an opportunity for a hearing in accordance with chapter 91, the director determines that:

- (1) There is a violation of any condition of the permit;
- (2) The permit was obtained by misrepresentation, or failure to disclose fully all relevant facts;
- (3) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted emission; or
- (4) The modification, suspension, or revocation is in the public interest.

In determining the public interest, the director shall consider the environmental impact of the proposed action, any adverse environmental effects of the proposed action, any adverse environmental effects which cannot be avoided if the action is implemented, the alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented, and any other factors which the director may by rule prescribe; provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality.

(d) The failure of the director to act on an application for the issuance of a permit or an application by a permit holder for the modification or renewal thereof within one-hundred-eighty days of the receipt of the application, shall be deemed a grant of the application; provided that the applicant acts consistently with the

application and all plans, specifications, and other information submitted as a part thereof.

(e) No applicant for a modification or renewal of a permit shall be held in violation of this part during the pendency of the applicant's application; provided that the applicant acts consistently with the permit previously granted, the application and all plans, specifications, and other information submitted as a part thereof.

**§342J-E Furnishing of information and entry and inspection of premises.** (a) For purposes of enforcing this part, the rules adopted pursuant to this part, and other applicable provisions of this chapter, any person who generates, transports, treats, stores, disposes of, processes, re-refines, burns (including burning for purposes of energy recovery), recycles, distributes, markets, or otherwise handles or has handled used oil or used oil fuel, upon the request of any duly authorized representative of the director, shall furnish information relating to the used oil or used oil fuel and permit the representative at all reasonable times to have access to, and to copy all records relating to the used oil or used oil fuel.

(b) For purposes of enforcing this part, the rules adopted pursuant to this part, and other applicable provisions of this chapter, the authorized representative may:

- (1) Enter, at reasonable times, any establishment or other place where used oil or used oil fuel is or has been generated, transported from, treated, stored, disposed of, processed, re-refined, burned (including burning for purposes of energy recovery), recycled, distributed, marketed, or otherwise handled;
- (2) Inspect and obtain samples of any used oil or used oil fuel and samples of any containers or labeling for used oil or used oil fuel; and
- (3) Obtain any other information, including financial information, for purposes of determining compliance with this part, the rules adopted pursuant to this part, and other applicable provisions of this chapter.

Each inspection shall be commenced and completed with reasonable promptness.

**§342J-F Emergency powers; procedures.** (a) Notwithstanding any other law to the contrary, if the governor or the director determines that the past or present handling of any used oil or used oil fuel may present an imminent and substantial endangerment to health or the environment, the governor or the director, without a public hearing, may secure or order relief that may be necessary to abate the danger or threat. The order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director. The governor or the director may also institute a civil action in any court of competent jurisdiction to secure any relief that may be necessary to abate the danger or threat.

(b) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of the declaration, if the power is conferred by statute or constitutional provision, or inheres in the office."

SECTION 2. Section 342J-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any order issued pursuant to this section may include a suspension, modification, or revocation of any permit issued under section 3005 of RCRA, 42 United States Code section 6925, by the Administrator of the United States Environmental Protection Agency, or issued under section 342J-5 or 342J-D by the director, and shall state with reasonable specificity the nature of the violation. Any administrative penalties assessed in the order shall be in accordance with section 342J-10."

SECTION 3. Section 342J-9, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Any person who denies, obstructs, or hampers the entrance or inspection by any duly authorized representative of the director, or fails to provide information requested by the representative under section 342J-6 or 342J-E shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken in court to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(c) Any person who knowingly:

- (1) Transports any hazardous waste to a storage, treatment, or disposal facility which does not have a permit pursuant to section 342J-5 to treat, store, or dispose of that particular hazardous waste;
- (2) Treats, stores, or disposes of hazardous waste without first having a permit pursuant to section 342J-5; [or]
- (3) Transports, treats, stores, disposes of, recycles, causes to be transported, or otherwise handles any used oil or used oil fuel in violation of any rules adopted pursuant to this chapter relating to used oil or used oil fuel; or
- [(3)] (4) Makes a false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used, for purposes of compliance with this chapter[;], including compliance with any rules adopted pursuant to this chapter relating to used oil or used oil fuel;

shall be subject to criminal penalties of not more than \$25,000 for each day of each violation, or imprisonment, not to exceed one year, or both. If the conviction is for a violation committed after a first conviction, criminal punishment shall be by a fine of not more than \$50,000 for each day of each violation, or by imprisonment for not more than two years, or both.”

SECTION 4. Section 342J-34.5, Hawaii Revised Statutes, is amended to read as follows:

“[[§342J-34.5]] Standards for persons who deal with [hazardous waste] fuel. The director may establish, by rule, standards applicable to persons who generate, transport, treat, store, dispose[,], of, process, re-refine, burn (including burning for purposes of energy recovery), recycle, distribute, [or] market, or otherwise handle any [fuel which is produced]:

- (1) Fuel from any hazardous waste; or
- (2) Fuel from any hazardous waste [or from] and any other material[.]; or
- (3) Fuel which otherwise contains any hazardous waste.”

SECTION 5. Chapter 342N, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 607-25, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) For purposes of this section, the permits or approvals required by law shall include compliance with the requirements for permits or approvals established by chapters 6E, 46, 54, 171, 174C, 180C, 183,<sup>1</sup> 184, 195, 195D, 205, 205A, 266, 342B, 342D, 342F, 342H, 342J, 342L, [342N,] and 343 and ordinances or rules adopted pursuant thereto under chapter 91.”



SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date. Rules that were adopted under the authority of chapter 342N, Hawaii Revised Statutes, shall remain in effect until they are replaced by rules adopted under the authority of chapter 342J, Hawaii Revised Statutes, or the new part to chapter 342J, Hawaii Revised Statutes, being enacted in this Act. References in the new part of chapter 342J, Hawaii Revised Statutes, to rules shall include rules adopted pursuant to chapter 342N until the rules adopted pursuant to chapter 342N, Hawaii Revised Statutes, are replaced by rules adopted under chapter 342J, Hawaii Revised Statutes, or the new part to chapter 342J, Hawaii Revised Statutes, being enacted in this Act.

SECTION 8. In codifying the new part added to chapter 342J, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections' designations in this Act.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved June 6, 1996.)

**Note**

1. Prior to amendment "183C," appeared here.

**ACT 83**

S.B. NO. 3108

A Bill for an Act Relating to the Clean Hawaii Center.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature enacted Act 202, Session Laws of Hawaii 1994, which created the clean Hawaii center. The purpose of the center is to work in partnership with business and government to develop and expand commercial markets for recyclable materials, recycled content products, and to facilitate recycling and environmental business and technology development. Act 202 established ambitious goals for the clean Hawaii center to:

- (1) Divert 400,000 tons of material annually to reuse and remanufacturing businesses in Hawaii;
- (2) Establish cooperative marketing agreements with foreign end users of recyclable material;
- (3) Assist at least ten new or expanded reuse or recycling businesses to become fully operational;
- (4) Create at least two hundred new reuse or remanufacturing jobs; and
- (5) Create at least seventy-five new private sector waste collection and processing jobs.

These goals were designed to support the State in reaching waste diversion goals established in Act 324, Session Laws of Hawaii 1991, which require a fifty per cent diversion (or approximately one million tons) of the waste stream by the year 2000. The legislature further enacted Act 2, Special Session Laws of Hawaii 1995, which clarified the legislative intent of Act 202 and provided operational authority for the clean Hawaii center and its governing board.

The legislature recognizes that the disposal of the State's almost two million tons of rubbish each year costs the public and private sectors more than \$250,000,000 annually. The legislature further recognizes that the value of recovered materials found in the waste stream such as waste paper, waste glass, plastic, aluminum cans, and tree or grass trimmings can reach an average \$45 per ton, with certain grades of waste paper often reaching as high as \$200 per ton, and aluminum often valued at \$700 per ton. Since the State has established a goal of a fifty per cent recycling rate by the year 2000 (or approximately 1,000,000 tons of material), the legislature believes that the value of recycling and the cost savings realized by diverting recyclable materials is a critical goal for the State's economy, and one that should be supported through business development efforts.

The legislature finds, however, that administrative and budgetary restrictions have constrained the ability of the clean Hawaii center's governing board to properly direct the policy, operations, and budget of the clean Hawaii center. The legislature further finds that the State's fiscal problems have resulted in the center's staff being limited to one person, and the department having reduced the legislature's budget allocation from \$150,000 to \$85,000 in fiscal year 1995-1996 with recommended further reductions to \$50,000 in fiscal year 1996-1997. As a result of these restrictions, the legislature believes that the goals and objectives outlined in Act 202 are not achievable and that the industry is not being supported with business development incentives. The legislature believes, however, that in spite of these difficulties, the mission of the center remains valid and that much has been accomplished with limited resources.

The legislature believes that although the waste diversion goals are necessary given the limited landfill options, the lack of financial, political, and administrative support will not allow them to be reached.

The purpose of this Act is to:

- (1) Provide a more realistic framework under which the department may act to assist the emerging recycling industry in Hawaii;
- (2) Dissolve the governing board of the clean Hawaii center and authorize the department to assume the duties previously assigned to the board;
- (3) Maintain clean Hawaii center's programs until June 30, 1999; and
- (4) Authorize the department to receive moneys from other government agencies through a simple transfer of funds.

SECTION 2. Section 210-3.5, Hawaii Revised Statutes, is amended to read as follows:

**“[§210-3.5] Clean Hawaii fund established.** There is established within the state treasury a special fund to be known as the clean Hawaii fund which shall be administered by the department of business, economic development, and tourism to fund the activities of the clean Hawaii center. All moneys derived from:

- (1) Other funding mechanisms established by future state laws;
- (2) All moneys appropriated to the fund by the legislature, received in fees and other royalties, earned on investments, or received as royalties or premiums; and
- (3) Any other moneys as may be received by the clean Hawaii center in the form of federal, state, county, or private grants, contracts, [or] gifts[;], or direct transfer of funds by federal, county, or other state agencies;

shall be deposited into the clean Hawaii fund and used for the purposes of Act 202, Session Laws of Hawaii 1994. The department may use appropriations and other moneys in the clean Hawaii fund not appropriated for a designated purpose, to make grants in accordance with criteria established by the clean Hawaii center, enter into contracts, pay for travel expenses of [board] committee members, administrative

expenses, organize, conduct, sponsor, or cooperate in the conduct of conferences, workshops, demonstrations, and studies relating to the stimulation and formation of a recycling or environmental business.”

SECTION 3. Section 342G-63, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The department shall expend moneys contained in the environmental management special fund to:

- (1) Partially fund the operating costs of the program including its regulatory functions and the development of waste reduction and diversion activities as mandated by chapter 342G;
- (2) Fund statewide education, demonstration, and market development programs, through direct contract [with] or direct transfer of funds to the counties and the department of business, economic development, and tourism, or under a grant program that may be developed under rules pursuant to chapter 91; and
- (3) Provide for annual training for municipal solid waste operators in compliance with 40 Code of Federal Regulations Part 258 and chapter 11-58, Hawaii Administrative Rules [Title 11, Chapter 58 (Proposed Revision)].”

SECTION 4. Act 202, Session Laws of Hawaii 1994, as amended by Act 2, Special Session Laws of Hawaii 1995, is amended as follows:

1. By amending section 2 to read:

“SECTION 2. (a) There is established within the department of business, economic development, and tourism, for administrative purposes only, the clean Hawaii center which shall be responsible for the market development of local processing and manufacturing industries for collected recyclables.

(b) The duties of the center shall be to:

- (1) Provide targeted assistance to recycling businesses, including:
  - (A) Grants and contracts for research and demonstration; [and]
  - (B) Low-interest, long-term loans leveraged through the Hawaii capital loan program, the Hawaii Strategic Development Corporation, the Hawaii Economic Development Corporation, the High Technology Development Corporation, the Hawaii innovative development fund, other state and federal financing programs, and private sector mechanisms including the Small Business Administration, targeting start-up and implementation costs;
  - (C) The development of business plans;
  - (D) Market research and planning information;
  - (E) Referral and information on market conditions; and
  - (F) Information on new technology and product development;
- (2) Undertake, in coordination with the department of health and county recycling programs, an integrated, comprehensive, education effort directed at government agencies, businesses, and the general public to promote processing, manufacturing, and purchase of recycled products. The education effort shall include:
  - (A) Providing information to businesses on the availability and benefits of using recycled materials;
  - (B) Providing information and referral services on recycled material markets; and

- (C) Providing information on new research and technologies that may be used by local businesses and governments;
  - (3) Assist the department of health, department of accounting and general services, and the counties in the development of consistent definitions and standards for recycled product content, product performance, and availability;
  - (4) Coordinate with the department of health to ensure that the education programs of both agencies are mutually reinforcing, with the center acting as the lead with respect to the business community and the department of health as the lead with respect to the general public;
  - (5) Facilitate, where possible, cooperative marketing of recyclable materials; and
  - (6) Administer the clean Hawaii fund.
- (c) In addition to other powers conferred upon it, the clean Hawaii center may do all things necessary and convenient to carry out the powers expressly and implicitly given in this Act, including but not limited to[;]:
- (1) Contract with others, public or private, for the provision of all or a portion of the services necessary for the management and operation of the center including, but not limited to: advisory services, technical, managerial, and marketing assistance, support, and promotion;
  - (2) Accept donations, grants, bequests, and devises of money, including direct transfers of funds, property, [service,] services, or other things of value that may be received from the United States or any agency thereof, the State or any agency thereof, any governmental agency, or any public or private institution, person, firm, or corporation, to be held, used, or applied for any or all of the purposes specified in this Act detailing receipt of each donation or grant in the annual report of the center, and including the identity of the donor or lender, the nature of the transaction, and any conditions attaching thereto;
  - (3) Disburse moneys in the clean Hawaii fund, including the expenditure of all appropriations, grants, contractual reimbursements, and other funds to carry out the purposes of the center and pay for the proper general expenses of the center;
  - (4) Organize, conduct, sponsor, or cooperate in and assist in the conduct of conferences, demonstrations, and studies relating to the stimulation and formation of a business; and
  - (5) Promote, facilitate, contract out for, administer, or manage recycling parks; and
  - (6) Adopt rules pursuant to chapter 91 to carry out the purposes of this Act."

2. By amending section 3 to read:

"SECTION 3. [(a) The clean Hawaii center shall operate under policies established by a governing board to be composed of one representative from each of the four counties to be appointed by the respective mayors, and the following to be appointed by the governor in accordance with section 26-34: one representative each from the department of business, economic development, and tourism and the department of health; two representatives from the financial community; and four representatives from the business community, two of which shall be from the recycling and waste management industry. The governing board shall be constituted no later than sixty days following the effective date of the Act. The department of health and the department of business, economic development, and tourism shall provide administrative and staff support to assist the start-up of the clean Hawaii center.

(b) A board member shall not participate in any decision to invest in, purchase from, sell to, borrow from, loan to, contract with, or otherwise deal with any person or entity in which the board member has a substantial financial interest.

(c) All members shall serve without compensation, but shall be reimbursed for travel expenses necessary for the performance of their duties.

(d) The board shall annually elect its chairperson and vice chairperson from among its members.

(e) (a) Grants may be made for amounts not to exceed \$100,000 for each applicant. Applications for grants shall be made to the center and contain such information as the center shall require by rules adopted pursuant to chapter 91, Hawaii Revised Statutes.

[(f)] (b) Chapter 42D, Hawaii Revised Statutes, shall not apply to the grants made pursuant to this Act.

[(g)] Any discussion or consideration of trade secrets or confidential commercial or financial information shall be held by the board, or any subcommittee of the board, in executive sessions closed to the public; provided that the purpose of any such executive session shall be set forth in the official minutes of the center, and business which is not related to that purpose shall not be transacted nor shall any vote be taken during the executive sessions.

[(h)] (c) The [governing board] department shall use the following criteria, at a minimum, when evaluating recycling projects to develop and fund:

- (1) The project's potential to have an impact on overall solid waste reduction and achievement of the State's reduction goals;
- (2) Whether the project addresses the alternative management of wastes identified by the solid waste disposal facility operators as problematic;
- (3) Whether the project maximizes economic benefits through import reduction or an increase in the tax base;
- (4) The project's potential for job creation; and
- (5) Whether [the board has been presented with] a business plan has been presented that reflects detailed and justifiable expenses and revenues, and shows potential for profit and the ability to meet market demand for end products.

[(i)] The board or a committee of the board shall review all business plans, except financial statements or personal information, to assess whether the proposed business or enterprise is likely to achieve the purposes of this Act, and shall make recommendations to the department regarding the appropriateness of the proposed business or enterprise. The department shall have final authority to approve or disapprove the loan or grant application.

[(j)] (d) The use of state funds, lands, or other resources for county waste reduction activities shall be restricted to those counties whose solid waste management programs are consistent with the requirements of chapter 342G, Hawaii Revised Statutes, and applicable county integrated solid waste management plans approved pursuant to chapter 342G, Hawaii Revised Statutes.

(e) The governing board shall cease to exist on June 30, 1996.

(f) The department may appoint committees from the public and private sectors, which shall include representatives from the neighbor islands, to provide advice and direction for the operation of the center until its closure in 1999."

3. By amending section 4 to read:

"SECTION 4. It is the goal of the clean Hawaii center to foster the growth of a reuse or recycling industry [by 1999,] by:

- [(1)] Diverting at least 400,000 tons of material annually to reuse and remanufacturing businesses in Hawaii;
- (2)] (1) Establishing cooperative marketing agreements with foreign end users of recyclable material; and

- (3) (2) Assisting [at least ten new or expanded] interested reuse or recycling businesses to become fully operational[;
- (4) Creating at least two hundred new reuse or remanufacturing jobs; and
- (5) Creating at least seventy-five new private sector waste collection and processing jobs].”

4. By amending section 5.1 to read:

“SECTION 5.1. The department of business, economic development, and tourism shall have the necessary powers to carry out the purposes of this Act and administer the clean Hawaii center, including but not limited to:

- (1) [With advice from the board, prescribe] Prescribing the qualifications for eligibility of applicants for grants;
- (2) [With advice from the board, establish] Establishing preferences and priorities in determining eligibility for grants; and
- (3) [Include] Including in its budget for subsequent fiscal periods amounts necessary to effectuate the purposes of this Act.”

5. By amending section 6 to read:

“SECTION 6. [(a) The department of business, economic development, and tourism shall develop and submit an expenditure plan for the first year of operation to the governing board for approval. This expenditure plan shall indicate:

- (1) The amounts which should be expended for loans and grants in accordance with the priorities and guidelines established under this Act; and
- (2) The amounts to be used to develop the organizational structure and administrative rules for the operation of the clean Hawaii center; hire a program manager and one additional staff person; and implement appropriate outreach, education and training programs.

In subsequent years, the clean Hawaii center and the department of business, economic development, and tourism shall work collaboratively in developing future expenditure plans.

(b) The governing board, no later than twenty days prior to the convening of the regular session of 1995, shall submit to the legislature a progress report on the clean Hawaii center program and, no later than twenty days prior to the convening of the regular session of 1996, shall submit to the legislature an organizational and implementation plan for the operation of the clean Hawaii center until the year 1999.]

On or before January 1, 1999, the [governing board] department of business, economic development, and tourism shall submit to the legislature a final report on the operation of the clean Hawaii center.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 6, 1996.)

## ACT 84

S.B. NO. 2999

A Bill for an Act Relating to Highways.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the use of overhead utility facilities requires utility poles that obstruct the public view, are unsightly, and present unsafe

highway conditions. Underground utility facilities, on the other hand, are more aesthetically pleasing and help to increase property values.

Decisions regarding the use of overhead or underground utility facilities for federal-aid highways are made by the director of transportation. The legislature finds that the public has had little input into those decisions, resulting in some public clamor on decisions by the director of transportation to allow overhead, instead of requiring underground, utility facilities. The legislature also finds that objections to underground utility facilities, such as flooding, termites, or exposure to electromagnetic fields, can be overcome in design.

Although underground facilities are typically more costly than overhead facilities, a large portion of the added costs of relocating underground federal-aid highway facilities, and in some cases providing utility facilities on new federal-aid highways, may be reimbursable by the federal government under the Federal Highways Act and the newly enacted Intermodal Surface Transportation Efficiency Act.

The legislature believes that the use of underground utility facilities will be more aesthetically-pleasing and could improve public safety. Over the past three years, there has been a yearly average of eight hundred fifty-five traffic accidents and twenty traffic fatalities involving utility poles.

The purpose of this Act is to require the director of transportation to provide for undergrounding utility facilities in the construction of all new federal-aid highways and improvements to existing federal-aid highways, upon determination that federal aid is available to do so.

SECTION 2. Chapter 264, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§264- Underground installation of utility facilities along federal-aid highways; when required; when waived.** (a) The director of transportation shall arrange for the installation of all utility cables and facilities below the ground, within a berm or away from the alignment of a highway, during the design or redesign and construction or reconstruction phases of any new or existing federal-aid highway project, when a determination is made that federal highway funds are available to pay for the federal share of the cost differential between underground and overhead facilities.

- (b) The director of transportation may make exceptions to subsection (a) if:
  - (1) The director determines that exceptions are appropriate due to either:
    - (A) Any of the following criteria: environmental, safety, research, technology, corridor alignment, or management concern; or
    - (B) The following criteria collectively: state funding impacts, economic feasibility, and federal funding concerns;
  - or
  - (2) The projects do not lend themselves to undergrounding, such as: resurfacing, traffic signal installation, drainage installation, bikeway markings, guardrail installation, traffic markings, and enhancement improvements.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved June 6, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 85

H.B. NO. 547

A Bill for an Act Relating to Motor Vehicles.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the people of the State of Hawaii must recognize our war veterans for their heroic and unselfish service to their country. The purpose of this Act is to allow special license plates to be issued to residents of Hawaii who are Pearl Harbor survivors.

SECTION 2. Section 249-9.2, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) In lieu of the number plates contracted on behalf of the counties by the director of finance of the city and county of Honolulu, the director of finance shall provide for a fee, one set of special number plates upon the receipt of an application together with [specific]:

- (1) Specific proof that the applicant was awarded the Purple Heart by the United States Department of Defense for wounds received in military or naval combat against an armed enemy of the United States<sup>1</sup> [or certification];
- (2) Certification that the applicant is a veteran[.]; or
- (3) Specific proof that the applicant was providing military service to the United States, on Oahu, or off-shore at a distance of not more than three miles at the time of the December 7, 1941, attack on Pearl Harbor. Certification from the Hawaii state chairperson of the Pearl Harbor Survivors Association shall constitute sufficient proof.

(b) The design of the plates for purple heart recipients shall include the words “COMBAT WOUNDED” [and], the design of the plates for veterans shall include the word [“VETERAN.”] “VETERAN”, and the design of the plates for the Pearl Harbor survivors shall include the words “PEARL HARBOR SURVIVOR”. These designations shall be imprinted on the left side of the license plates in a manner similar to congressional and honorary consul license plates.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 6, 1996.)

Note

1. Prior to amendment “,” appeared here.



## ACT 86

H.B. NO. 548

A Bill for an Act Relating to Motor Vehicles.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the people of the State of Hawaii must recognize our war veterans for their heroic and unselfish service to their country. The purpose of this Act is to allow special license plates to be issued to residents of Hawaii who are former prisoners of war.

SECTION 2. Section 249-9.2, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) In lieu of the number plates contracted on behalf of the counties by the director of finance of the city and county of Honolulu, the director of finance shall provide for a fee, one set of special number plates upon the receipt of an application together with [specific];

- (1) Specific proof that the applicant was awarded the Purple Heart by the United States Department of Defense for wounds received in military or naval combat against an armed enemy of the United States[, or certification];
- (2) Certification that the applicant is a veteran[.]; or
- (3) Specific proof that the applicant was confined as a prisoner of war while providing military service to the United States.

(b) The design of the plates for purple heart recipients shall include the words “COMBAT WOUNDED” [and], the design of the plates for veterans shall include the word [“VETERAN.”] “VETERAN”, and the design of the plates for former prisoners of war shall include the words “FORMER PRISONER OF WAR”. These designations shall be imprinted on the left side of the license plates in a manner similar to congressional and honorary consul license plates.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 6, 1996.)

## ACT 87

H.B. NO. 3046

A Bill for an Act Relating to the Penal Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 706-606.5, Hawaii Revised Statutes, is amended to read as follows:

“**§706-606.5 Sentencing of repeat offenders.** (1) Notwithstanding section 706-669 and any other law to the contrary, any person convicted of murder in the second degree, any class A felony, any class B felony, or any of the following class C felonies: section 707-703 relating to negligent homicide in the first degree; 707-711 relating to assault in the second degree; 707-713 relating to reckless endan-

gering in the first degree; 707-716 relating to terroristic threatening in the first degree; 707-721 relating to unlawful imprisonment in the first degree; 707-732 relating to sexual assault or rape in the third degree; 707-735 relating to sodomy in the third degree; 707-736 relating to sexual abuse in the first degree; 707-751 relating to promoting child abuse in the second degree; 707-766 relating to extortion in the second degree; 708-811 relating to burglary in the second degree; 708-821 relating to criminal property damage in the second degree; 708-831 relating to theft in the first degree as amended by Act 68, Session Laws of Hawaii 1981; 708-831 relating to theft in the second degree; 708-835.5 relating to theft of livestock; 708-836 relating to unauthorized control of propelled vehicle;<sup>1</sup> 708-852 relating to forgery in the second degree; 708-854 relating to criminal possession of a forgery device; 710-1031 relating to intimidation of a correctional worker; 710-1071 relating to intimidating a witness; 711-1103 relating to riot; 712-1203 relating to promoting prostitution in the second degree; 712-1221 relating to gambling in the first degree; 712-1224 relating to possession of gambling records in the first degree; 712-1243 relating to promoting a dangerous drug in the third degree; 712-1247 relating to promoting a detrimental drug in the first degree; 134-7 relating to ownership or possession of firearms or ammunition by persons convicted of certain crimes; 134-8 relating to ownership, etc., of prohibited weapons; 134-9 relating to permits to carry, or who is convicted of attempting to commit murder in the second degree, any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony offenses enumerated above, or any felony conviction of another jurisdiction shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole during such period as follows:

(a) One prior felony conviction:

- (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—ten years;
- (ii) Where the instant conviction is for a class A felony—six years, eight months;
- (iii) Where the instant conviction is for a class B felony—three years, four months;
- (iv) Where the instant conviction is for a class C felony offense enumerated above—one year, eight months;

(b) Two prior felony convictions:

- (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—twenty years;
- (ii) Where the instant conviction is for a class A felony—thirteen years, four months;
- (iii) Where the instant conviction is for a class B felony—six years, eight months;
- (iv) Where the instant conviction is for a class C felony offense enumerated above—three years, four months;

(c) Three or more prior felony convictions:

- (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—thirty years;
- (ii) Where the instant conviction is for a class A felony—twenty years;
- (iii) Where the instant conviction is for a class B felony—ten years;
- (iv) Where the instant conviction is for a class C felony offense enumerated above—five years.

(2) Except as in subsection (3), a person shall not be sentenced to a mandatory minimum period of imprisonment under this section unless the instant felony offense was committed during such period as follows:

- (a) Within twenty years after a prior felony conviction where the prior felony conviction was for murder in the first degree or attempted murder in the first degree;
- (b) Within twenty years after a prior felony conviction where the prior felony conviction was for murder in the second degree or attempted murder in the second degree;
- (c) Within twenty years after a prior felony conviction where the prior felony conviction was for a class A felony;
- (d) Within ten years after a prior felony conviction where the prior felony conviction was for a class B felony;
- (e) Within five years after a prior felony conviction where the prior felony conviction was for a class C felony offense enumerated above;
- (f) Within the maximum term of imprisonment possible after a prior felony conviction of another jurisdiction.

(3) If a person was sentenced for a prior felony conviction to a special term under section 706-667, then the person shall not be sentenced to a mandatory minimum period of imprisonment under this section unless the instant felony offense was committed during such period as follows:

- (a) Within eight years after a prior felony conviction where the prior felony conviction was for a class A felony;
- (b) Within five years after the prior felony conviction where the prior felony conviction was for a class B felony;
- (c) Within four years after the prior felony conviction where the prior felony conviction was for a class C felony offense enumerated above.

(4) The sentencing court may impose the above sentences consecutive to any sentence imposed on the defendant for a prior conviction, but such sentence shall be imposed concurrent to the sentence imposed for the instant conviction. The court may impose a lesser mandatory minimum period of imprisonment without possibility of parole than that mandated by this section where the court finds that strong mitigating circumstances warrant such action. Strong mitigating circumstances shall include, but [will] shall not be limited to<sup>2</sup> the provisions of section 706-621. The court shall provide a written opinion stating its reasons for imposing the lesser sentence.

(5) A person who is imprisoned in a correctional institution pursuant to subsection (1) shall not be paroled prior to the expiration of the mandatory minimum term of imprisonment imposed pursuant to subsection (1).

(6) For purposes of this section:

- (a) Convictions under two or more counts of an indictment or complaint shall be considered a single conviction without regard to when the convictions occur;
- (b) A prior conviction in this or another jurisdiction shall be deemed a felony conviction if it was punishable by a sentence of death or of imprisonment in excess of one year;
- (c) A conviction occurs on the date judgment is entered.”

SECTION 2. Section<sup>3</sup> 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§708- Unauthorized entry into motor vehicle.** (1) A person commits the offense of unauthorized entry into motor vehicle if the person intentionally or

knowingly enters or remains unlawfully in a motor vehicle with the intent to commit a crime against a person or against property rights.

(2) Unauthorized entry into motor vehicle is a class C felony.”

SECTION 3. Chapter 711, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§711- Interference with the operator of a public transit vehicle. (1) A person commits the offense of interference with the operator of a public transit vehicle if the person interferes with the operation of a public transit vehicle or lessens the ability of the operator to operate the public transit vehicle by:

- (a) Intentionally, knowingly, or recklessly causing bodily injury to the operator of the public transit vehicle; or
- (b) Threatening, by word or conduct, to cause bodily injury to the operator of the public transit vehicle with the intent to terrorize, or in reckless disregard of the risk of terrorizing the operator of the public transit vehicle.

(2) For the purposes of this section, “public transit vehicle” is a public paratransit vehicle providing service to the disabled, any transit vehicle used for the transportation of passengers in return for legally charged fees or fares, any school bus, or any taxi.

(3) Interference with the operator of a public transit vehicle is a class C felony.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>4</sup>

SECTION 6. This Act shall take effect upon its approval.

(Approved June 6, 1996.)

#### Notes

- 1. Should be underscored.
- 2. Prior to amendment “,” appeared here.
- 3. Should be “chapter”.
- 4. Edited pursuant to HRS §23G-16.5.

## ACT 88

H.B. NO. 4010

A Bill for an Act Relating to Public Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that widespread development of farm ownership is one of several stipulated uses of proceeds from the public land trust and continued growth and development of diversified agriculture is an objective of the Hawaii state plan.

Certain permittees of agricultural lands have occupied such state lands for many years, but because their tenure is on a month-to-month basis, they lack security and are unable to obtain financing for farm improvements due to the lack of long-term tenure, and this, in turn, prevents more productive use of the land.

The purpose of this Act is to authorize the department of agriculture to negotiate long-term leases with certain permittees of agricultural lands. The legislature finds that it is in the public interest to assist qualifying permittees who depend on farming the state land for a livelihood, that the purpose of this Act is consistent with the objectives of the Hawaii state plan, and the State would realize greater returns from the long-term disposition of lands now under permit.

SECTION 2. Chapter 166, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§166- Lease negotiation.** (a) The department of agriculture may negotiate and enter into leases with any person who:

- (1) As of the effective date of this Act, holds a revocable permit for agricultural purposes; or
- (2) Has formerly held an agricultural lease which expired within the last ten years preceding the effective date of this Act and has continued to occupy the state land; and
- (3) Does not own agriculturally-zoned land of twenty-five acres or more in the State, individually or jointly with a spouse, or whose spouse does not own twenty-five acres or more of agriculturally-zoned land in the State.

(b) The land eligible for lease negotiations under this section are limited to those lands:

- (1) Zoned and used for agricultural purposes;
- (2) Set aside by governor's executive order to the department of agriculture for agricultural uses only; and
- (3) Not needed by any state or county agency for any other public purpose.

(c) In negotiating and executing a lease as authorized, the board of agriculture shall:

- (1) Require the appraisal of the parcel to determine the fair market value;
- (2) Require the payment of annual lease rent based on the fair market value established by appraisal;
- (3) Require the payment of a premium, computed at twenty-five per cent of the annual lease rent, with the premium to be added to the annual lease rent for each year of the lease equal to the number of years the lessee has occupied the land, except that the premium period shall not exceed four years; and
- (4) Recover from the lessee the costs of expenditures required by the department to convert the parcel into leasehold.

Within six months from the effective date of this section, the department shall notify in writing the permittees of lands eligible for lease negotiations under this section and shall inform the permittees of the terms, conditions, and restrictions provided by this section. Any permittee may apply for a lease; provided that the application shall be submitted to the department in writing within thirty days from the date of receipt of notification; provided further that the department may require documentary proof from any applicant to determine that the applicant meets eligibility and qualification requirements for a lease as specified by this section.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 1996.

(Approved June 6, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 89

S.B. NO. 2446

A Bill for an Act Relating to the Recodification of the Education Statutes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the traditional centralized school system is no longer the best model to meet the broad range of needs of our diverse student population. Thus, the legislature has begun a process of systemic reform, a “top-down support for bottom-up reforms” to provide individual schools with the flexibility and autonomy to develop and implement alternative administrative and instructional frameworks that will lead to better quality education and higher student performance. Our intent is to empower individual schools to be directly accountable for student achievement and to “put students first”.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
EDUCATION**

**PART I. GENERAL PROVISIONS**

§ -201 **Definitions.** As used in this chapter, the following terms have the following meanings unless the context indicates otherwise:

“Air conditioning” means any mechanical device that cools or heats air.

“Board” means the board of education.

“Cafeteria workers” includes all employees of any public school cafeteria other than the cafeteria manager.

“Councilor” means a member of a district school advisory council.

“Department” means the department of education.

“Early education” means a developmentally appropriate early childhood development and education program for children from birth to eight years of age.

“EDN 100” means the budget program identification number for the school-based budgeting program within the department.

“Educational officers” includes principals, vice-principals, and professional employees of the state and district offices of the department, except those employees in the classified service.

“Exceptional children” includes:

- (1) Persons under twenty years of age who deviate from the so-called normal person in physical, mental, social, or emotional characteristics or abilities to such an extent that specialized training, techniques, and equipment are required to enable these persons to attain the maximum of their abilities or capacities; provided that “exceptional children” shall not include “gifted and talented children”;
- (2) Persons under twenty years of age who by reason of physical defects cannot attend the regular public school classes with normal children; and
- (3) Persons under twenty years of age who are certified by a licensed physician eligible for membership in the state medical society as being

emotionally maladjusted or intellectually incapable of profiting from ordinary instructional methods.

“Gifted and talented children” means students residing in the State who are of compulsory school age and are enrolled in, and attending, a public school, and whose superior performance or potential indicates exceptional ability or talent. This ability or talent may occur singly in or in combination with any of the following areas: intellectual, creative or specific academic abilities, leadership capabilities, psychomotor abilities, or abilities in the performing or visual arts.

“Incumbent teachers” refers to teachers presently in service or on authorized leaves from the department.

“Job-sharing” means the voluntary sharing of a full-time, permanent employee’s position with another employee, with each employee working one-half of the total number of hours of work required per week and performing one-half of the work required of the respective full-time position, and with each employee receiving one-half of the salary to which each employee is respectively entitled and at least one-half of each employee benefit afforded to full-time employees.

“Private trade, vocational, or technical school” means any plan or method used by any person or persons, firm, or any other organization or corporation for giving instruction in any form or manner in any trade, occupation, or vocation for a consideration, reward, or promise of whatever nature, including correspondence schools located within the State, except as follows:

- (1) Schools maintained, or classes conducted, by employers for their own employees where no fee or tuition is charged;
- (2) Courses of instruction given by any fraternal society, benevolent order, or professional organization to its members, which courses are not operated for profit;
- (3) Flying schools qualified under the Federal Aviation Administration;
- (4) Classes conducted for less than five students at one and the same time;
- (5) Classes or courses of instruction that are conducted for twenty or fewer class sessions during any twelve month period;
- (6) Avocational, hobby, recreation, or health classes or courses;
- (7) Courses of instruction on religious subjects given under the auspices of a religious organization; and
- (8) Schools registered by the department of commerce and consumer affairs or by boards and commissions placed in the department of commerce and consumer affairs for administrative purposes.

“Public office” excludes notaries public, reserve police officers, officers of emergency organizations for civilian defense or disaster relief, or county charter commissions.

“Public schools” means all academic and noncollege type schools established and maintained by the department in accordance with law. All other academic and noncollege type schools are “private schools”, irrespective of the hours during which the sessions take place.

“Regional administrative unit” means a grouping of complexes established by the department for administrative support and organizational purposes.

“School-based budget flexibility” means an operating budget preparation and allocation process that provides maximum flexibility to individual schools, complexes, and learning support centers in the preparation and execution of their operating budgets.

“School/community-based management system” means a method of educational management that diffuses educational decisionmaking to involve or secure the input of those persons directly affected by the decision to be made at the school level, and encourages school-initiated methods for achieving educational goals established statewide by the board.

“School complex” means a grouping of schools established by the department for instructional, administrative, and organizational purposes.

“Special facilities” includes buildings, equipment, and materials; transportation; boarding homes; and personnel qualified to work with exceptional children.

“Special services” means physiotherapy, or any form of muscle training, speech training, occupational therapy, vocational training, psychological evaluation, or any of them.

“Student-centered schools” means the implementation of alternative frameworks with regard to curriculum; facilities management; instructional approach; length of the school day, week, or year; and personnel management.

“Superintendent” means the superintendent of education.

“Teacher” means a person whose duties in the public educational system are primarily teaching or instruction of students or related activities centered primarily on students and who is in close and continuous contact with students, and shall include but not be limited to classroom teachers, school librarians, counselors, registrars, and special education teachers.

“Vandalism” includes, but is not limited to, mischievous or malicious destruction of property, such as breakage of windows, lockers, and doors.

## PART II. PROVISIONS AFFECTING STUDENTS

### A. Student Performance Standards

§ -301 **Statewide performance standards.** (a) The board shall establish statewide performance standards and the means to assess the standards based upon the recommendations in the final report of the performance standards commission established pursuant to Act 334, Session Laws of Hawaii 1991; provided that the board may review and modify the performance standards, as the board deems necessary, to reflect the needs of public school students and educational goals adopted by the board.

(b) The board shall appoint a performance standards review commission, to be convened at the beginning of the 1997-1998 school year, and every four years thereafter, to assess the effectiveness of the performance standards. The commission shall include representatives of the Hawaii State Parent, Teacher, Student Association; the Hawaii State Student Council; the superintendent; the dean of the college of education of the University of Hawaii; and the professional education community. The commission may request the assistance of such department or school staff as may be necessary to facilitate its review.

(c) The commission shall review the implementation of the performance standards by the board and the schools to determine whether the standards should be modified. In making this determination, the commission shall seek public input by holding public forums to discuss the implementation and effectiveness of the performance standards. The commission shall submit a report of its findings and recommendations regarding the effectiveness of the standards and the need for modification of the standards to the board and the legislature prior to the convening of the 1999 regular session. The board shall consider and implement the modifications beginning with the 1999-2000 school year.

§ -302 **Student assessment waiver.** Any school electing to participate in school/community-based management may develop and implement its own student assessment mechanisms; provided that the board shall include the results of the assessments in the educational status report to the legislature and the governor required in section -1106.



## B. Curriculum and Instruction

§ -401 **Incentive and innovation grants.** (a) There is established in the state treasury a trust fund to be known as the incentive and innovation grant trust fund to provide incentive and innovation grants to qualified schools. Expenditures from the trust fund shall be made by the department and shall be subject to the allotment and expenditure plan required under section 37-34.5. Notwithstanding any other law to the contrary, tax deductible donations may be made to, and received by, this trust fund.

(b) Grants shall be for such purposes as the funding of experimental and innovative instructional programs, in-service training, and other activities that promote innovation as outlined in the proposal.

(c) The board shall establish and appoint the members of a grant award panel, which shall consist of at least one representative from each of the following groups:

- (1) Parents;
- (2) Students;
- (3) Teachers;
- (4) School administrators;
- (5) School support staff;
- (6) Business persons; and
- (7) The military; whose participation shall be requested.

The panel shall include a representative from each school district among its members.

The panel shall review proposals and make recommendations to the superintendent on grant awards. Panel members shall serve for a term of two years without compensation, but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of their duties. A portion of the moneys in the incentive and innovation grant trust fund, not to exceed one per cent, shall be used to offset the expenses incurred by the review panel.

(d) The panel shall develop a process for submitting proposals that is distinguished by its simplicity and minimization of paperwork.

(e) All proposals for incentive and innovation grants shall include:

- (1) A clear statement of how the proposed program will improve student performance;
- (2) A method of evaluation to determine if the program has achieved its stated goals;
- (3) A detailed budget and expenditure plan, which shall include any commitment of existing funds under the school or schools' allotment toward the proposed program; and
- (4) Other criteria required by the panel.

(f) In the case of a renewal request, a school or schools shall submit a specific plan for establishing the program within the school or schools' biennium budget.

(g) The panel shall assist the superintendent in the evaluation of all grant programs under this section on a continuing basis. If an approved program fails to meet the requirements of its proposal, the panel shall recommend to the superintendent that funding for the grant shall be terminated.

(h) The superintendent shall submit a report to the legislature on the operations of the review panel at least twenty days before the convening of each regular session.

## C. Supplementary Programs

§ -501 **Articulation agreement with the University of Hawaii; enrollment.** The department, in consultation with, and with the concurrence of, the

University of Hawaii, shall establish rules to permit qualified students to enroll in any vocational or academic courses offered by the University of Hawaii system; provided that the courses apply to the department's graduation requirements or are otherwise permitted by the department's rules or policies.

§ **-502 Dental hygiene instruction.** The department shall provide preventive dental hygiene instruction for the children of the State of school age in the public schools.

§ **-503 Nutrition workers.** The superintendent may appoint, with the approval of the board, two trained and experienced nutrition workers for the purpose of carrying on nutrition work in the public schools, under such rules as the board shall make from time to time. The salary of these workers shall be as provided by law.

§ **-504 School lunches.** School lunches shall be made available under the school lunch program in every school where the students are required to eat lunch at school.

§ **-505 School cafeterias; funds; expenditures.** (a) The price for the school lunch shall be set by the department to ensure that moneys received from the sale of the lunches shall be one-third of the cost of preparing the school lunch, rounded to the nearest 25 cents, adjusted during the first year of each fiscal biennium. The price for the school lunch shall be based on the average cost of preparing the school lunch over the three years preceding the second year of the biennium.

(b) All moneys received by or for the public school cafeterias from the sale of meals, the sale of services, the federal government, or any other source, shall be deposited in one special school lunch fund. Except as otherwise provided by the legislature, all expenditures for the operation of public school cafeterias shall be made from this fund.

(c) It is the intent of this section not to jeopardize the receipt of any federal aid and to the extent, and only to the extent necessary to effectuate this intent, the governor may modify the strict provisions of this section, but shall promptly report any such modification with the governor's reasons therefor to the next succeeding session of the legislature for review.

§ **-506 Transportation of school children.** (a) The department may provide suitable transportation to and from school and for educational field trips for all children in grades kindergarten to twelve and in special education classes. The department shall adopt such policy, procedure, and program as it deems necessary to provide suitable transportation. In formulating the policy, procedure, and program, the department shall consider the school district; the school attendance area in which a school child normally resides; the distance the school child lives from the school; the availability of public carriers or other means of transportation; the frequency, regularity, and availability of public transportation; and the grade level, physical handicap, or special learning disability of a school child, and it may also consider such conditions and circumstances unique or peculiar to a county or area.

(b) The department shall adopt rules under chapter 91 governing the supervision and administration of the transportation of school children under this section.

§ **-507 School bus contracts.** (a) Any other law to the contrary notwithstanding, school bus contracts between the State and a private contractor may be extended for two years by mutual agreement; provided that the parties may agree to

extend the contract for an additional two years thereafter. The compensation due to the contractor by the State for each extended year may be increased by an amount not to exceed five per cent of the previous year's compensation. In addition, the compensation due to the contractor by the State for any original or extended contract year may be increased by a reasonable amount for unanticipated inflationary increases in the cost of fuel. If the original contract between the State and a private contractor already includes an option to extend the contract period, this subsection shall apply after the contract option is exercised.

(b) In the renegotiation for the extension of any contract, the contractor shall be notified at least three months in advance to prepare data and facts relating to fuel cost for the justification of an increase in the amount for the new contract period.

(c) If a school is temporarily closed due to an unexpected disruption necessitating the closing of the school, the contractor and the State may enter into renegotiation for payments of fixed costs.

(d) The contract between the State and the contractor shall include an age limit for the school bus vehicles that may be used. The serviceability of a vehicle shall be determined by chapter 286.

(e) The contract between the State and the contractor shall include a provision requiring the contractor to equip the contractor's vehicles with the signs and visual signals described in sections 291C-95(d) and (g). The contract shall also include other provisions as may be deemed necessary by the State for the safety of school bus passengers and shall include provisions requiring periodic refurbishment of school buses over ten years old.

**§ -508 After-school and weekend programs.** The department and the appropriate county agencies may establish and regulate programs of after-school and weekend community-school activities for children, including but not limited to day-care programs, arts and crafts, hula, ukulele, and other educational or recreational projects, wherever feasible, at public school and public park facilities. In addition to any appropriation of public funds, reasonable fees established by the agencies operating the programs may be collected from children enrolled, in the furtherance of particular programs. The appropriate agencies may obtain from time to time the services of persons in a voluntary or unpaid capacity, exempt from chapters 76 and 77, as may be necessary for carrying out the purposes of this section, and may regulate their duties, powers, and responsibilities when not otherwise provided by law. Any person whose services have been so accepted, while engaged in the performance of duty under this section, shall be deemed a state employee or an employee of a political subdivision, as the case may be, in determining the liability of the State or the political subdivision for the negligent acts of these persons.

**§ -509 Policy.** The department shall develop a plan for quality voluntary early education that will be fully implemented and available statewide to all eligible children on a voluntary basis no later than January 1, 2000.

**§ -510 Quality early education plan.** (a) The department plan for quality early education shall focus on children from ages four up to six years.

(b) The board shall adopt standards and criteria for quality early education based on current national standards and the needs of Hawaii's children. The standards and criteria shall provide the basis upon which the early education plan shall be developed.

(c) The department of education shall work cooperatively with the department of human services, the department of health, college level education programs, the office of children and youth, early education organizations, parents of young

children, and other appropriate organizations, in developing a quality early education plan. The plan shall include but not be limited to the following:

- (1) Standards for curriculum, activities, facilities, and teacher training for early childhood education;
- (2) Methods and materials designed to involve and educate parents and guardians in the education and development of their young children;
- (3) A timetable and implementation schedule, approved by the board, to be submitted to the governor and the legislature;
- (4) Costs for delivery of early childhood services, including how costs can be shared between the public and private sectors; and
- (5) Assessment of training and certification capacity of teachers, including assurances by teacher training institutions to recruit and graduate qualified staff for early childhood education.

(d) Early education shall be delivered through private providers to the maximum extent possible, and provision shall be made to enable parents and guardians to opt for home care if they so choose by providing early childhood education resources in each school for in-home use.

(e) Beginning with the 1997-1998 school year, this section shall be interpreted as though the term "certification" read "licensing" or "credentialing", as the latter terms are used in part III, subpart D, and as circumstances require.

**§ -511 Kindergartens; attendance.** (a) The department may establish and maintain kindergartens with a program of instruction in school zones where there are at least fifteen children eligible to attend, as a part of the public school system. No child shall attend any kindergarten unless the child will be at least five years of age on or before December 31 of the school year; provided that a child attending a school that convenes after the regular school schedule shall be five years of age on or before one hundred twenty-five days following the date the school convenes; and provided further that the department may establish procedures and criteria to determine the psychological and physiological readiness of children for kindergarten and may grant an exception in the case of a child who is found to be ready.

(b) The department may accept gifts to establish and maintain kindergartens.

**§ -512 Blind or visually handicapped concessionaires.** (a) Each secondary public school, upon the approval of the principal and the district superintendent, may allow on the premises vending machines operated as a concession; provided that the concession shall be operated only by a blind or visually handicapped person, as defined in sections 235-1, 347-1, and 347-2. The location and operation of the vending machines and the items dispensed shall be approved by the department.

(b) The concession shall be awarded and operated under chapter 102; provided that the selection of a concessionaire shall be in accordance with departmental guidelines and shall take into consideration the price of the items sold and any revenue-sharing arrangement made with school-related program organizations.

**§ -513 Driver education.** (a) The department may establish and administer a motor vehicle driver education and training program to be conducted at each public high school in the State.

(b) The department, for the purpose of this section, shall:

- (1) Set the prerequisites and priorities for enrollment in the course of driver education and training, which shall be open to every resident of the State who is fifteen years of age or older and under nineteen years of age;

- (2) Establish the requirements for and employ necessary instructors, who are certified to have completed satisfactorily an approved instructor's course, to conduct the course in driver education and training;
- (3) Issue a certificate of completion to every student upon satisfactory completion of the course in driver education and training;
- (4) Purchase, rent, or acquire by gift, materials and equipment necessary for the program established by this section; and
- (5) Cooperate with the chief of police in each county in promoting traffic safety.

(c) The department may adopt rules under chapter 91, necessary for the purposes of this section and section -514.

**§ -514 Courses for instructors in driver education.** (a) The department shall be responsible for conducting approved courses for instructors in driver education and training.

(b) The department shall certify any person who satisfactorily completes a course for instructors in driver education and training as provided in subsection (a).

**§ -515 Motor vehicles for driving instruction; purchase and sale.** Chapter 103D to the contrary notwithstanding, the department may enter into agreements with any dealer or company for the purchase of motor vehicles for driving instruction in the public schools if the agreements provide that the department pay \$1 for each motor vehicle, take title thereto in the name of the State, and agree to resell it to the seller for \$1 within sixty days following the last day of the school year. In the event of the seller's failure to repurchase, the department may retain the motor vehicle or dispose of it in accordance with rules adopted under chapter 91.

**§ -516 Driver education fee.** The board may assess a fee for each student enrolling in the driver education program. All such fees collected shall be deposited into the state treasury to the credit of the general fund.

**§ -517 Traffic safety education.** (a) The department may establish and administer a traffic safety education program to be conducted at each public school for students from grades kindergarten through twelve.

(b) The department may establish the requirements for the position of traffic safety education specialist and may employ at least one traffic safety education specialist for the purposes of this section. The traffic safety education specialist may be paid out of fees allocated to the director of commerce and consumer affairs from the special drivers education fund account pursuant to section 431:10C-115.

**§ -518 Agricultural and industrial courses may be taught in public schools.** The department may include agricultural and industrial pursuits among the branches of instruction taught by the public schools.

**§ -519 Department may prescribe courses.** The department may prescribe the manner and designate the places in which agricultural, domestic arts, and industrial courses shall be conducted, and determine the extent to which they shall be followed, either generally or to suit particular cases.

**§ -520 Profits to pupils.** All net profits arising from agricultural and industrial pursuits under sections -518 to -532 at any school, under the rules of the department:

- (1) Shall be used by the school for the purchase of equipment and material, not otherwise provided for in the school budget, that will be of general benefit to the pupils; or

(2) May be distributed among the pupils actually engaged in the pursuits. The department shall provide for the keeping of simple books of account, showing the source and distribution of the money resulting from the operations carried on pursuant to this section and section -518, and for the auditing of these books of account at least quarterly.

**§ -521 Reserved.**

**§ -522 Accounting for vocational education programs.** Vocational education programs shall be accounted for in accordance with procedures established by the comptroller.

**§ -523 Public school laws relate to agricultural and industrial pursuits.** All laws for the government, discipline, and welfare of the public schools, in their operation, shall be construed to include the enforcement of sections -518 to -532 in relation to agricultural and industrial pursuits in the schools.

**§ -524 Establishing thirteenth and fourteenth years at Lahainaluna High School.** The state board for vocational education, within the limits of available funds, shall extend to the thirteenth and fourteenth years vocational agriculture and farm shop training programs at the Lahainaluna High School, which program shall operate under the Smith-Hughes Act and the George-Barden Act and the state plan for vocational agriculture.

**§ -525 Regulation of other schools and classes.** The department, at its discretion, may regulate schools, classes, or courses excepted from the definition of "private trade, vocational, or technical school".

**§ -526 License required for private trade, vocational, or technical school.** No private trade, vocational, or technical school shall be operated by any person or persons, firm, or any other private organization or corporation for the purpose of teaching any trade, occupation, or vocation unless there is first secured from the department a license issued in accordance with sections -525 to -529 and in such form as the department may direct.

**§ -527 Suspension and revocation of license; procedure.** (a) The department, after notice and opportunity for a hearing, may suspend or revoke a license at any time when, in the judgment of the department, the licensee is not complying with sections -525 to -529 or the rules that may be adopted by the board. The notice of hearing shall be served personally or sent to the licensee by registered or certified mail with return receipt at the licensee's last known address.

(b) Notice of suspension or revocation shall be served personally upon the licensee or sent to the licensee by registered or certified mail with return receipt, and the licensee shall forward the licensee's license at once to the department, and cease at once to operate the private trade, vocational, or technical school.

(c) All proceedings shall be subject to chapter 91.

**§ -528 Powers of department.** No license shall be issued under sections -525 to -529 until the department has approved the method and content of the advertising, the standards and the methods of instruction, and the equipment provided. The department may consult with trade or vocational experts as to the

equipment provided and the standards and methods of instruction offered. The department may adopt reasonable rules relating to the enforcement of sections -525 to -529.

§ **-529 Penalty.** Any person, firm, or corporation that violates sections -525 to -529 shall be guilty of a misdemeanor, but shall be subject to a maximum fine of not more than \$100 or imprisonment for not more than ninety days, or both.

§ **-530 Vocational student internship program authorized.** To provide students with opportunities to apply knowledge and skills acquired in the classroom to real life work experiences, the department may establish and regulate a program of vocational student internship under conditions determined by the department.

§ **-531 Coverage for workers' compensation.** Whenever a student participating in the department's vocational student internship program undertakes to perform work for a private employer as part of the student's internship program, the State shall be deemed to be the responsible employer for the purposes of workers' compensation coverage, which shall be the student's exclusive remedy to the same extent as provided for in chapter 386 as against the State and the private employer participating in the program.

§ **-532 Rules.** The board may adopt necessary rules under chapter 91 to administer and implement sections -530 to -532, including the adoption of safety guidelines and safety inspection procedures of facilities where students are placed. The department shall inspect each facility annually prior to the placement of students with these facilities.

§ **-533 Adult and community education authorized.** To provide increased opportunity for the people of Hawaii, the department shall establish and regulate a program of adult and community education of less than college grade. The department shall provide public school buildings and other facilities, and use public school equipment under conditions determined by the department, when the equipment is needed, for adult and community education programs.

§ **-534 Scope of adult and community education programs offered.** As rapidly as resources are available and interest is developed, instructional programs shall be initiated in the following fields:

- (1) Basic elementary education. A foundation program in reading and speaking English, writing, and arithmetic for persons with no schooling or only primary grade training;
- (2) Advanced elementary education. A program in advanced elementary education for those persons who have completed four to eight years of schooling and who desire to obtain more complete mastery of the fundamentals;
- (3) Secondary education. A program of secondary education for those adults who, in youth, left school or for some reason had their education curtailed and who now desire to continue their education; for those youths who have been excepted from compulsory attendance under section -1234; and for those youths who are in need of courses to complete their high school graduation requirements;
- (4) Adult literacy education. A basic program in reading and writing English, and arithmetic for persons who need to develop or improve their

mastery of basic literacy skills in these areas for purposes of enhancing their personal, social, or employment lives;

- (5) Homemaking and parent education. A program in homemaking and parent education for all those parents and other adults who desire training in family life, including child care, nursing, budgeting, and other instruction basic to homemaking;
- (6) Community education. A program to facilitate understanding and enlightenment in civic duties, responsibilities, and obligations for all persons who desire to keep pace with today's community, national, and world developments and who realize the necessity of continuing study for the adequate fulfillment of their civic functions. Community education addresses responsibilities within a given community, especially concerns related to education and the schools, and offers additional services to supplement and enrich the educational program of in-school children and youths;
- (7) Naturalization training. The standard course of training provided by the United States Immigration and Naturalization Service, which shall be provided to all those persons who have filed applications for United States citizenship and desire to enroll in such a course under the supervision of the department; and
- (8) Cultural opportunities. A program of adult and community education that will meet the interests and desires of those people who wish to enrich and to broaden their cultural, recreational, and social interests.

§ -535 **Advisory council for adult and community education.** The board shall appoint an advisory council for adult and community education composed of fifteen or more representatives of industry, labor, civic organizations, and education. Appointments shall be for a term of two years with reappointments optional but not to exceed a total of six years on the advisory council.

§ -536 **Financing adult and community education program.** The financial support for this program shall be in part from fees collected from students enrolled, and in part from public funds appropriated for this purpose. Fees shall be set in accordance with the recommendations of the advisory council, and may be collected from students regularly enrolled; provided that:

- (1) Adults registered with the department of labor and industrial relations and unemployed shall be granted free enrollment in such courses as will tend to assist these persons in securing employment;
- (2) Adults certified by the department of human services as indigent may be enrolled on a nonfee basis in classes that will tend to assist these persons in becoming self-sustaining;
- (3) Discharged veterans who are entitled to federal educational assistance shall be enrolled upon authorization of the Department of Veterans Affairs and fees shall be charged against federal funds in accordance with Department of Veterans Affairs contract regulations; and
- (4) Administrative and supervisory costs, costs of instruction, and all other necessary expenses not covered by fees and other authorized charges shall be paid for out of funds appropriated for this purpose.

§ -537 **Departmental duty toward exceptional children.** (a) It is hereby declared to be of vital concern to the State that all exceptional children residing in the State be provided with instruction, special facilities, and special services for education, therapy, and training to enable them to live normal competitive lives. In order to effectively accomplish this purpose, the department shall establish and



administer instruction, special facilities, and special services for the education, therapy, and training of exceptional children, and provide in connection therewith corrective therapy, together with academic, occupational, and related training. The department shall cooperate with other agencies of the State charged with the administration of laws providing any type of service or aid to the exceptional child, and with the United States government through any appropriate agency or instrumentality in developing, extending, and improving the foregoing instruction, special facilities, and special services.

(b) This program shall include boarding facilities, when necessary, special classes in schools or homes, and such other facilities as shall be required to render appropriate services to the exceptional child. Existing facilities, buildings, and equipment belonging to, or operated by, the State shall be made available for these purposes when use thereof does not conflict with the primary use of the facilities.

§ -538 **Division of special education; personnel.** There shall be within the department a division of special education for the promotion, direction, supervision, and control of the program. The department may employ necessary personnel adequately qualified by training and experience to direct and supervise the types of instruction, special facilities, and special services specified in sections -537 to -544.

§ -539 **Facilities, service, when required.** Where one or more exceptional children are found in any one district superintendent's district, the superintendent of education shall provide instruction, special facilities, and special services according to the specifications of sections -537 to -544 in a manner most expedient and economical.

§ -540 **Eligibility standards.** The eligibility of exceptional children for instruction, special facilities, and special services shall be determined in accordance with those standards established by the department.

§ -541 **Coverage for workers' compensation.** Whenever an exceptional child as defined in section -101 undertakes to perform work for a private employer as part of the child's instructional program, the State shall be deemed to be the responsible employer for the purposes of workers' compensation coverage.

§ -542 **Studies, surveys, rules.** The department shall establish and make such studies, surveys, evaluations, and rules as are necessary to carry out the purposes of sections -537 to -544.

§ -543 **Occupational therapy services, physical therapy services, school health services, mental health services, psychological services, and medical services for diagnostic or evaluative purposes.** The department of health, within the funds available, shall be responsible for the related services of occupational therapy, physical therapy, school health, mental health, psychological, and medical services for evaluation or diagnostic purposes, and, within the funds available, shall provide for those exceptional children who need these services and who attend public school in the State. The department of health shall work in cooperation with the department of education to implement this section. The procedures to implement this section shall be in accordance with the department of health's rules.

§ -544 **Administrative hearing procedures and subpoena power relating to the education of handicapped children.** (a) An impartial hearing may be

requested by any parent or guardian of a handicapped child, or by the department, on any matter relating to the identification, evaluation, program, or placement of a handicapped child. The department shall adopt rules that conform to the requirements of any applicable federal statutes or regulations pertaining to the impartial hearing based on the education of a handicapped child. The rules shall require that any party may be present at the proceeding, be accompanied and advised by counsel or individuals with special knowledge or training with respect to the problems of handicapped children, may require witnesses to be under oath, cross-examine witnesses, and obtain a written or electronic verbatim record of the proceedings.

(b) Any party to these hearings or the hearings officer shall have the right to compel the attendance of witnesses upon subpoena issued by the hearings officer. The fees for attendance shall be the same as for the fees of witnesses before circuit court. In case of the failure of any person to comply with a subpoena, a circuit court judge of the judicial circuit in which the witness resides, upon application of the hearings officer, shall compel attendance of the person.

§ -545 Reserved.

§ -546 **Programs for gifted and talented children.** The department may provide a statewide flexible system of educational placement and programs within the public school system that the department determines is appropriate for meeting the unique educational needs of gifted and talented children. The nature and scope of the department's educational placement and programs shall be based on, but not be limited to, the following factors:

- (1) The availability of financial and physical resources within the department;
- (2) The nature of the child's gift or talent; and
- (3) Whether the child's educational placement and program should focus on, or be limited to, a particular area of gift or talent, or whether the educational placement and program should address other areas that may be beneficial to the development of the child as a whole.

§ -547 **Rules.** The board shall adopt necessary rules under chapter 91 to administer and implement sections -546 to -547.

### PART III. PROVISIONS AFFECTING SCHOOL PERSONNEL

#### A. Specific Definitions

§ -601 **Definitions.** (a) For the purposes of sections -702 to -712, "school" includes every academic and noncollege type of school under governmental supervision.

(b) For the purposes of sections -901 to -909:

"Board" means the Hawaii teacher standards board.

"Credential" means an emergency or temporary license issued under this chapter based on standards and guidelines set by the board.

"License" means the document signifying the board's grant of permission to practice the profession of teaching.

"Teacher" means an employee of the department paid under the salary schedule contained in the unit 5 collective bargaining agreement.

This subsection is repealed on June 30, 2000.

## B. Employment Conditions and Compensation

**§ -701 Selection of school personnel.** School/community-based management councils may participate in the selection of school personnel by providing input into the selection process.

**§ -702 Teachers; certificates; licenses and credentials.** (a) No person shall serve as a teacher before the 1997-1998 school year in any public school without first having obtained a certificate from the department, which certificate shall be issued without cost to the teacher, in such form as the department determines. The department shall establish types of certificates in the educational field and the requirements to qualify for those certificates.

(b) Beginning with the 1997-1998 school year, no person shall serve as a teacher in any public school without first having obtained a license or credential pursuant to subpart D from the department in such form as the department determines.

**§ -703 Teaching without certificates; licenses or credentials; penalty.** (a) Except as otherwise provided, before the 1997-1998 school year, whoever serves as a teacher in any public school without holding an unrevoked certificate issued under sections -702 to -743, and -801, shall be fined not more than \$25.

(b) Beginning with the 1997-1998 school year, whoever serves as a teacher in any public school without holding an unrevoked or unsuspended license or credential issued under subpart D, shall be fined not more than \$500.

**§ -704 District superintendents.** The superintendent of education, with the approval of the board, shall appoint district superintendents for schools.

**§ -705 Principals and acting principals.** Principals and acting principals shall meet the department's certification requirements and shall have served as a teacher for a period of not less than five years, of which one year must have been served as a teacher or as an exchange principal in the schools of Hawaii.

**§ -706 Considerations in appointing teachers.** In the appointment of teachers by the department, preference shall be given to local teachers of the same standing, grade, or rating as those teachers from without the State. The rating of a teacher shall not depend upon the number of pupils promoted or graduated, but solely upon the length of service, efficiency, and ability of the teacher.

**§ -707 Probationary period of employment.** (a) All teachers, principals, and vice-principals entering the service of the department for the first time shall serve as probationary employees of the department for a minimum period of two consecutive years; provided that:

- (1) The consecutive employment may be interrupted by maternity leave, sick leave, or any other leave approved by the department not exceeding a period of three years; by military leave not exceeding a period of five years; or by termination or nonrenewal of the probationary employment contract because of decrease in the number of pupils or for causes over which the department has no control, the period between employment not to exceed five years, without loss of credit for the period of probationary employment; and
- (2) At or prior to the end of two years of probation, the department may extend the probationary period of a teacher, principal, or vice-principal for additional periods not to exceed a total of five years.

(b) Any full-time intern teaching period served in the State shall be credited toward fulfillment of the probationary period. Any annual contract with any teacher, principal, or vice-principal during this probationary period of employment may or may not be renewed as the department shall determine. The department, during the probationary period, may discharge or demote a teacher, principal, or vice-principal.

**§ -708 Reemployed teachers; rights.** After the completion of the probationary period without discharge, such teachers as are thereupon reemployed shall continue in service in the public schools during good behavior and competent service and prior to the age at which the teachers are eligible for retirement, pursuant to section 88-73 or 88-281, and shall not be discharged or demoted except for one or more of the causes specified in section -709.

**§ -709 Causes for discharge or demotion; preferred eligibility list.** Causes for the discharge or demotion of a teacher shall be inefficiency or immorality; wilful violations of policies and rules of the department; or for other good and just cause. The department, without a hearing, may terminate the tenure rights of a teacher who fails to return to service, except when caused by illness, following the expiration of an approved leave of absence. Teachers may also be dismissed because of a decrease in the number of pupils or for other causes over which the department has no control. Dismissals due to a decrease in the number of pupils or for causes over which the department has no control shall begin with those teachers with the least number of years of service. The teachers so dismissed shall be placed on a preferred eligibility list and shall have the right to be restored to duty in the order of length of service whenever vacancies occur in which the teacher is qualified.

**§ -710 Job-sharing.** (a) A job-sharing program is established in the department subject to the requirements in this section.

(b) The superintendent shall announce the job-sharing program to all full-time, tenured, certificated personnel of the department, excluding educational officers, and shall solicit the voluntary requests of personnel interested in participating in the program.

The superintendent, in consultation with the recognized employee bargaining units, shall formulate and adopt guidelines for the implementation of this section. Employees who respond to the announcement and other persons who request information shall receive a full written description of the terms of the program when the guidelines are finalized, and those persons desiring to participate may apply to participate in the program. The employees who apply for participation shall obtain the concurrence of their immediate supervisor, other appropriate personnel officers, and the superintendent. Those persons who qualify then shall be interviewed by a personnel officer of the department.

Upon the selection of a permanent, full-time employee for job-sharing, the superintendent shall convert the position of the employee into two job-sharing positions, one of which shall be filled by the employee, and the other by the hiring of a new hire or by another tenured, certificated employee of the department, excluding any educational officer.

A person hired to fill a job-sharing position shall be recruited through this section and shall possess the minimum requirements of the full-time position that was converted into a job-sharing position under this section.

(c) Benefits that can be divided in half, such as the number of days of sick leave, and are considered to be an equitable share when divided, shall be computed on that basis. Benefits that cannot be divided, such as eligibility for membership in the public employees' health plan shall be given to the job-sharers without the foregoing division, notwithstanding any provision of chapter 87 or 88 to the

contrary. The newly hired job-sharer shall be excluded from collective bargaining under chapter 89.

The full-time permanent employee shall not lose membership in an employee bargaining unit because of participation in this program, any other law to the contrary notwithstanding. Union membership or service fees paid by the job-sharer under this section shall be at a level consistent with normal union membership dues or service fees. The State's contribution to the job-sharers' prepaid health, prepaid dental, and group life insurance plans shall be the same as for full-time employees, any other law to the contrary notwithstanding. Job-sharers shall be covered under chapter 386 and the applicable provisions of chapter 383. Service credit for the tenured teacher participating in the program under this section shall be given on the same basis as that for full-time employees. Nothing in this section shall be construed, however, to vest any person with any rights to permanent employment status, whether under civil service or otherwise, which did not exist prior to the participation of the person in the job-sharing program. The granting of tenure shall be under applicable statutes. No full-time position shall be abolished or reduced to a half-time position except for the purpose of job-sharing. In a reduction-in-force procedure, consideration of a job-sharer's tenure rights shall be on the same basis as that of a full-time employee. Nothing in this section shall impair the employment or employment rights or benefits of any employee.

(d) Tenured employees sharing full-time positions with other tenured employees shall not be required to relinquish their duty-free period. The job-sharing team shall submit to its principal a job-sharing proposal that preserves its duty-free period and meets the educational needs of its students. Where the job-sharing team cannot reach a reasonable scheduling agreement, the team may agree to waive its contractual rights by executing a contract waiver.

(e) Participation in the program shall require the commitment on the part of all parties to a contractual agreement for one year; provided that the employee shall be given the option to renew the contract for another year, subject to approval by the immediate supervisor and personnel officer of the department.

(f) No job-sharing position committed to a specified period of time under the terms of the contractual agreement shall be converted to full-time status before the termination of the contractual agreement. A job-sharing vacancy created by the resignation, retirement, or other permanent or temporary severance of employment with the department on the part of any person may be filled by the department either through recruitment of another person pursuant to this section, or by increasing the remaining half-time job-sharing person to full-time employment by mutual agreement.

(g) Upon the termination of contractual agreements, all job-sharing positions shall be renegotiated or reconverted to full-time positions, and the employees who held the full-time positions prior to their participation in the job-sharing program under this section shall be entitled to resume their positions without loss of previous tenure or other employee rights.

(h) Beginning with the 1997-1998 school year, this section shall be interpreted as though the term "certificated" read "licensed" or "credentialed", as the latter terms are used in subpart D, and as circumstances require.

**§ -711 Authorized leaves of absence; tenure status unaffected.** The granting of authorized leaves of absence by the department to regularly employed teachers shall not affect any of the tenure rights that the teacher may have acquired prior thereto under section -708.

§ **-712 School teachers afflicted with tuberculosis.** No person who has contracted tuberculosis, while afflicted with the disease, may be allowed to teach in any public school.

§ **-713 Exchange teachers and educational officers; terms of contract.**

(a) The superintendent may contract for the exchange of teachers and educational officers of the State with teachers and educational officers of any other state, country, or territory. Teachers and educational officers of the State so exchanged shall be paid their regular salaries. The qualifications of all teachers and educational officers from any such state, country, or territory so exchanged shall be equal to the qualifications of the teachers and educational officers exchanged by the State. In the selection of teachers and educational officers to be exchanged, preference shall be given in the following order: teachers over educational officers; principals and vice-principals over other educational officers.

(b) All teachers and educational officers so exchanged by the State shall be furnished transportation to and from the state, country, or territory with which exchanged.

(c) No compensation shall be paid by the State to teachers and educational officers exchanged from any other state, country, or territory; provided that in any case where the exchanged teacher or educational officer sent from Hawaii becomes incapacitated or, for any reason, leaves the exchange position permanently, the department may pay the visiting exchange teacher or educational officer an amount not to exceed the salary rating of the teacher or educational officer on exchange from Hawaii. The arrangement may continue until the end of the current school year or until such time as some satisfactory adjustment has been made.

§ **-714 Sabbatical leaves authorized.** (a) The department may grant a year's or six months' sabbatical leave of absence to any teacher or educational officer who has served seven years in the public schools of the State. The teacher or educational officer shall be guaranteed a return to the teacher's or educational officer's or an equivalent position at the expiration of the leave.

(b) In granting sabbatical leaves, the department shall consider, but not be limited to, the following:

- (1) The nature and length of professional educational course work, research, or other professional activity approved by the department; and
- (2) Applicant's seniority; provided that seniority shall not be the dominant factor in granting sabbatical leaves.

(c) The leave shall not be extended beyond one year and may not be repeated until after a period of seven additional years of service.

§ **-715 Pay while on sabbatical.** Teachers or educational officers on sabbatical leave shall be paid an amount equal to one-half of the salary to which the teacher or educational officer would be entitled if regularly reappointed. The payments shall be made in regular monthly installments, the last two of which shall not be made until after the teacher or educational officer has returned to the teacher's or educational officer's position in the department. A teacher or educational officer granted sabbatical leave may engage in any form of employment provided the conditions established in section -716 are fulfilled.

§ **-716 Conditions of sabbatical leave of absence.** (a) A teacher or educational officer on sabbatical leave shall devote one-half of the teacher's or educational officer's total leave to professional educational course work, research, or other professional activity approved by the department. The department shall establish guidelines and criteria of professional educational course work, research,

or other professional activity. Before granting a sabbatical leave to a teacher or educational officer, the department and the teacher or educational officer shall enter into a contract, which shall provide for the following:

- (1) That the teacher or educational officer agrees to return to serve in the department, the University of Hawaii, or any community college for a period of not less than two years within one year after termination of the teacher's or educational officer's sabbatical leave;
- (2) That upon failure of the teacher or educational officer to comply with paragraph (1), the teacher or educational officer agrees to refund to the department all moneys received while on sabbatical leave;
- (3) That upon failure of the teacher or educational officer to comply with paragraph (2), the teacher or educational officer agrees to pay for all costs incurred by the department in enforcing paragraph (2);
- (4) That upon failure to comply with paragraph (1), the teacher's or educational officer's Hawaii teaching certificate shall be canceled by the department; and
- (5) Any other provisions deemed necessary by the department to be included in the contract.

(b) Beginning with the 1997-1998 school year, this section shall be interpreted as though the term "certificate" read "license" or "credential", as the latter terms are used in subpart D, and as circumstances require.

§ -717 **Leaves of teachers, coffee schedule.** The board and superintendent may arrange for the attendance at summer school of not more than twenty per cent of the teachers serving in schools that are on the coffee schedule, provided each such teacher can be replaced with a satisfactory substitute. The salary of the substitute teacher shall be paid out of the appropriation, salaries for substitute teachers.

§ -718 **Classification, teachers.** (a) The designation of any teacher to any given class shall be determined by the department in accordance with its certification requirements.

(b) Teachers shall be classified as follows:

- (1) A Class I teacher is any teacher who holds a certificate issued by the department and who does not qualify as a Class II, III, IV, V, VI, or VII teacher as described below;
- (2) A Class II teacher is any teacher who holds a certificate issued by the department based upon four acceptable years of college education and other requirements as may be established by the department;
- (3) A Class III teacher is any teacher who holds a certificate issued by the department based upon five acceptable years of college education and other requirements as may be established by the department;
- (4) A Class IV teacher is any teacher who holds a certificate issued by the department based upon five acceptable years of college education and fifteen additional credits approved by the department and other requirements as may be established by the department;
- (5) A Class V teacher is any teacher who holds a certificate issued by the department based upon five acceptable years of college education and thirty additional credits approved by the department and other requirements as may be established by the department;
- (6) A Class VI teacher is any teacher who holds a certificate issued by the department based upon five acceptable years of college education and forty-five additional credits approved by the department and other requirements as may be established by the department; and

- (7) A Class VII teacher is any teacher who holds a certificate issued by the department based upon five acceptable years of college education and sixty-six additional credits approved by the department and other requirements as may be established by the department, or any teacher who holds a certificate issued by the department based upon a doctorate and who teaches subjects in or related to the teacher's major.

(c) Any teacher teaching technical school courses who is transferred to a community college under the jurisdiction of the board of regents of the University of Hawaii shall not suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege.

(d) Beginning with the 1997-1998 school year, this section shall be interpreted as though the terms "certification" and "certificate" read "licensing" or "credentialing", and "license" or "credential", as the latter terms are used in subpart D, and as circumstances require.

§ -719 **Classification, educational officers.** The board shall classify all educational officer positions of the department and adopt a classification/compensation plan for these educational officer positions; provided that the classification/compensation plan shall include a classification appeals procedure.

§ -720 **Classification/compensation appeals board; adjustments to classification/compensation plan.** (a) There shall be established a classification/compensation appeals board within the department for administrative purposes. The appeals board shall be composed of three members. One member shall be appointed by the board of education and one member appointed by the exclusive bargaining unit representing educational officers. The third member shall be appointed by the governor and shall serve as chairperson. No member shall be an employee of the department, a member of the board of education, or an employee of the organization representing educational officers. The appeals board shall sit as an appellate body on matters of classification/compensation. All decisions of the appeals board shall be by majority vote and be binding on both parties.

(b) The appeals board shall meet biennially every even-numbered year to receive pricing appeals from affected persons and parties relating to the classification/compensation plan. All petitions for appeal shall be filed with the appeals board within twenty days from the date set by the appeals board for receipt of these appeals.

The appeals board shall meet on a quarterly basis as needed to receive classification appeals. All petitions for educational officer classification appeals shall be filed with the appeals board within twenty working days from the date of receipt of notification of the classification action or twenty working days from the date of receipt of the superintendent's written decision on the employee's internal administrative review appeal.

(c) The appeals board shall function independently of the board of education and the department, but may procure office facilities and clerical assistance from them. Neither the appeals board nor any of its members or staff shall consult with any member of the board of education or department except on notice and opportunity for the appealing employee or the employee's representative to participate.

The appeals board shall adopt policies and standards relative to classification/compensation. The appeals board may adopt rules pursuant to chapter 91 for the conduct of appeal hearings.

(d) The appeals board shall make whatever adjustments that are necessary to the affected classes where the appeals have been filed in the classification/compensation plan.



The appeals board shall hear pricing appeals and complete the final adjustment to the classification/compensation plan by the first Wednesday of December of all even-numbered years. Following the final pricing adjustment to the classification/compensation plan, the superintendent shall submit to the legislature, through the office of the governor, a report setting forth the classification/compensation plan and the cost thereof for its information and approval. The approved classification/compensation plan shall be effective as of July 1 of each odd-numbered year.

The appeals board shall hear classification appeals on a quarterly basis upon receipt of the appeals. The effective date of the appeals for twelve-month educational officers shall be the first pay period immediately following the receipt of the current position description by the classification/compensation section of the department. The effective date for ten-month officers shall be the beginning of the appropriate semester (September or January).

(e) Notwithstanding any other laws to the contrary, each member of the appeals board shall receive \$50 per day for each day on which work is done by them in connection with authorized activities of the appeals board. The cost thereof shall be met by legislative appropriations for the appeals board.

**§ -721 Salary; assistant superintendents, district superintendents, deputy district superintendents.** The salaries of assistant superintendents, district superintendents, and deputy district superintendents shall be set by the board. Effective July 1, 1991, the salaries of deputy district superintendents shall be not less than \$65,683 nor more than \$72,886 a year.

**§ -722 Salary ranges, teachers.** Salary ranges for teachers of the department shall be subject to the requirements of sections -724 and -726 and shall be as follows:

DEPARTMENT OF EDUCATION  
SALARY RANGES

Class	POSITIONS	DOESR
	I	1
	II	3
	III	5
	IV	6
	V	7
	VI	8
	VII	9

**§ -723 Salary ranges, educational officers.** Salary ranges for educational officer positions of the department shall be determined by the board based on the position classification/compensation plan approved by the board. Salary ranges for educational officer positions shall be subject to the requirements of sections -725 and -726.

**§ -724 Teachers salary schedule.** (a) The salary schedule for all teachers of the department of education shall be negotiated pursuant to section 89-9.

(b) All teachers must meet the following requirements:

- (1) A teacher must earn at least five credits within a three-year cycle in order to receive increment or longevity step increases in the third year of the three-year cycle;

- (2) A teacher who fails to meet the requirement set forth in paragraph (1) shall not be eligible for any increment or longevity step increases until the teacher earns the credit requirement for the three-year cycle;
- (3) Any credit earned in excess of any three-year credit requirement may not be carried over beyond the three-year cycle; and
- (4) Credits earned can be in the form of in-service, university, or other credits approved by the department.

(c) A teacher is required to spend at least one year in Class III before going on to Class IV, at least one year in Class IV before going on to Class V, at least one year in Class V before going on to Class VI, and at least one year in Class VI before going on to Class VII.

(d) In case of promotion from a teaching position to an educational officer, the employee shall receive compensation at the lowest step of the higher grade that exceeds the employee's existing compensation by at least eight per cent if such a step exists.

(e) Effective July 1, 1996, the per diem rate for substitute teachers shall be based on the annual entry step salary rate established for a Class II teacher on the most current teachers' salary schedule. The per diem rate shall be derived from the annual rate in accordance with the following formula:

$$\text{Per Diem Rate} = \text{Annual Salary Rate} \div 12 \text{ months} \div 21 \\ \text{Average Working Days Per Month}$$

**§ -725 Educational officers salary schedules.** (a) The salary schedule for all educational officers of the department shall be negotiated pursuant to section 89-9.

(b) Any principal, vice principal, or other educational officer on a ten-month work year must earn at least six credits within a three-year cycle in order to receive an increment or longevity step increase in the third year of the three-year cycle.

**§ -726 Salary increases; annual, longevity.** (a) Teachers and educational officers who have completed a year's satisfactory service and who have complied with the other requirements of sections -702 to -743, and -801, shall be entitled to an annual increment.

(b) Teachers and educational officers who have served satisfactorily for three years in their maximum increment step or in any longevity step and who have complied with the other requirements of sections -702 to -743, and -801, shall receive longevity step increases.

**§ -727 Salary ratings of entering or reentering teachers; credit for military service.** (a) Any teacher with more than one year of teaching experience, and so accredited by the department, entering or reentering the service of the department shall have the teacher's salary rating determined by the personnel executive of the department, any other law to the contrary notwithstanding, so that the salary rating shall be equal to the salary ratings held by incumbent teachers in the department with the identical number of years of experience.

(b) Any teacher who served on active duty with the armed forces of the United States shall be given credit by the department for the teacher's military service in the determination of the teacher's salary, the teacher's eligibility for leaves of absence, and for all other purposes of seniority. Both reentering and entering teachers shall have each year of their military service or six months thereof credited as a year of teaching experience; provided that no more than four years of credit for military service shall be allowed. Evidence of military service shall be by certificate.

§ **-728 Change in classification.** Any teacher who qualifies for a higher class shall be transferred to the higher class as of the beginning of the next semester and shall receive the salary at the appropriate step and range of the higher class.

§ **-729 Educational officers; demotion, transfers.** Any educational officer demoted to a position in a lower salary range shall continue to be paid the educational officer's previous salary for the first year of the educational officer's demotion, after which time the educational officer shall be compensated at the appropriate step in the salary range to which the educational officer has been demoted. Unless otherwise provided by the department, any educational officer who is in a school in which the school rating has declined to a number that would place the educational officer in a lower classification shall continue to be paid at the educational officer's same salary range as long as the educational officer remains in the same position in the same school.

§ **-730 Reserved.**

§ **-731 Teachers with special assignments, vocational agriculture, and technical school teachers.** Teachers with special assignments, where their responsibilities are greater, may be provided additional benefits by the department. In determining additional benefits for vocational agriculture and technical school teachers, the department may allow credit for practical experience.

§ **-732 Educational officer with special assignments.** Educational officers at the state, district, and school levels with special assignments, where their responsibilities are greater than the responsibilities falling within the scope of their ordinary duties and responsibilities, shall be provided additional benefits by the department.

§ **-733 Additional benefits to certain teachers.** The department shall provide additional benefits to grade level chairpersons, department heads, registrars, and librarians in schools. The department shall also provide additional benefits to teachers assigned to schools in areas designated as limited environment communities by the department.

§ **-734 Pay of teachers under the Konawaena coffee vacation plan.** Teachers under the Konawaena coffee vacation plan shall be paid, under such conditions as the department may require, their monthly accruing salaries during the months of September and October of each year during which the plan is in operation.

§ **-735 Noncertificated personnel.** (a) All noncertificated administrative, professional, and technical personnel not engaged in instructional work shall be placed by the department in the appropriate salary ranges within the educational officers schedule.

(b) Beginning with the 1997-1998 school year, this section shall be interpreted as though the term "certificate" read "license" or "credential", as the latter terms are used in subpart D, and as circumstances require.

§ **-736 Educational assistants.** All educational assistants employed in the department shall be employed under the provisions of chapter 76 and shall have their compensation fixed in accordance with chapter 77; provided that:

- (1) The monthly rate of compensation so determined shall be multiplied by ten and then divided by twelve and the resulting amount shall be the employee's monthly salary payable over a twelve-month period;

- (2) Weekly working hours for educational assistants shall be established in the same manner as working hours for teachers; and
- (3) Educational assistants shall have the same vacation and sick leave allowances as teachers.

§ **-737 Cafeteria managers.** All cafeteria managers employed in the department shall be employed under chapter 76 and shall have their salaries fixed in accordance with chapter 77, and the monthly rates of basic compensation so determined shall be payable over a twelve-month period without proration or deduction for periods when school is not in session. Cafeteria managers shall have the same vacation and sick leave allowances as school teachers and principals.

§ **-738 Reserved.**

§ **-739 Cafeteria workers.** All cafeteria workers employed in the department shall be employed under chapter 76 and shall have their compensation fixed in accordance with chapter 77, and the monthly rates of basic compensation so determined shall be payable for employment over a twelve-month period. All cafeteria workers shall be employed on a full-time basis, except that a limited number of part-time workers may be employed by the department. No cafeteria worker employed on a part-time basis shall work less than twenty hours per week. The department shall establish a schedule, based on factors that determine the need for part-time workers, fixing the number of part-time workers that may be employed by the department.

§ **-740 Reserved.**

§ **-741 Evaluation of teachers and educational officers.** The department shall establish an evaluation program for all teachers and educational officers. The evaluation shall be performed at least once in each school year. The program shall define the criteria for evaluation and assign responsibilities for the application of the criteria. The evaluation of a teacher or educational officer shall be on the basis of efficiency, ability, and such other criteria as the department shall determine.

§ **-742 House parents; statewide center for students with hearing and visual impairments.** All house parents at the statewide center for students with hearing and visual impairments employed in the department shall be employed under chapter 76 and shall have their compensation fixed in accordance with chapter 77, and the monthly rates of basic compensation so determined shall be payable for employment over a twelve-month period. All house parents shall be employed for twelve months on a full-time basis.

§ **-743 Public schools; minimum staffing levels.** (a) Schools with only one class for each grade level in kindergarten through grade six shall be exempt from the average statewide class size ratio that may be established under any collective bargaining agreement between the teacher's exclusive bargaining representative and the department. These schools shall maintain a minimum staffing level of not less than one full-time equivalent teacher position per grade level per school, for kindergarten to grade six. This subsection shall not apply to a school with fewer than twelve students in any one grade level.

(b) The department shall carry out the purposes of this section using existing resource teachers within the state and district offices.

## C. Staff Development and Incentives

§ **-801 Incentive packages for quality teachers.** Teachers in the public school system may accept incentive packages provided by local communities for the purpose of retaining those teachers in schools with high teacher turnover. Packages may include such items as:

- (1) Provision of housing;
- (2) Provision of mileage reimbursement;
- (3) Provision of discounts at local businesses; and
- (4) Other items not covered by chapter 89, and agreed upon by the community.

## D. Hawaii Teacher Standards Board

§ **-901 Reserved.**

§ **-902 Hawaii teacher standards board established.** (a) There is established the Hawaii teacher standards board, which shall be placed within the department for administrative purposes only. The board shall consist of nine members, including four certified teachers, three educational officers, the chairperson of the board of education or the chairperson's designee, and the dean of the University of Hawaii college of education or the dean's designee.

(b) Except for the chairperson of the board of education, and the dean of the college of education, the governor shall appoint the members of the board pursuant to section 26-34, from a list of qualified nominees submitted to the governor by the departments, agencies, and organizations representative of the constituencies of the board. To the extent possible, the board membership shall reflect representation of elementary and secondary school personnel and the neighbor islands.

(c) Appointed board members shall serve three-year terms.

(d) Board members shall receive no compensation. When board duties require that a board member take leave of the board member's duties as a state employee, the appropriate state department shall allow the board member to be placed on administrative leave with pay and shall provide substitutes, when necessary, to perform that board member's duties. Board members shall be reimbursed for necessary travel expenses incurred in the conduct of official board business.

(e) The chairperson of the board shall be designated by the members of the board.

§ **-903 Licensing and credentialing standards.** (a) The board shall establish licensing and credentialing standards that govern teacher licensing and credentialing within the department. Licensing and credentialing standards established by the board shall be adopted as rules under chapter 91.

(b) In the development of its standards, the board shall consider the existing teacher applicant pool that is available in the State and the level of the qualifications of these applicants, as well as the nature and availability of existing pre-service higher education teacher training programs. The board shall also consider alternative certification, such as national teacher examinations, and credentials that certify competency in subject areas or programs taught in the public schools.

§ **-904 Powers and duties of the board.** In addition to establishing standards for the issuance of licenses and credentials, the board's powers shall also include:

- (1) Setting and administering its own budget;

- (2) Adopting, amending, repealing, or suspending the policies, standards, or rules of the board in accordance with chapter 91;
- (3) Receiving grants or donations from private foundations;
- (4) Submitting an annual report to the governor and the legislature on the board's operations;
- (5) Conducting a cyclical review of standards and suggesting revisions for their improvement;
- (6) Establishing licensing and credentialing fees in accordance with chapter 91; and
- (7) Establishing penalties in accordance with chapter 91.

§ **-905 Powers and duties of the department.** The department shall retain all of its rights and powers except for the authority provided to the board under this subpart. The department's powers and duties under this subpart shall be limited to administering the teacher licensing and credentialing process, including:

- (1) Issuing, renewing, revoking, suspending, and reinstating licenses and credentials;
- (2) Issuing credentials, not to exceed one year at a time, pending the submittal of transcripts and other documentation;
- (3) Issuing credentials, not to exceed one year at a time, to fill vacancies only after exhausting all reasonable recruitment means to find qualified, interested, and acceptable candidates;
- (4) Applying licensing and credentialing standards on a case-by-case basis and conducting licensing and credentialing evaluations;
- (5) Preparing and disseminating teacher licensing and credentialing information to schools and operational personnel;
- (6) Developing applicable rules and procedures;
- (7) Administering reciprocity agreements with other states; and
- (8) Implementing changes made by the board to licensing and credentialing standards.

§ **-906 Teachers; license or credential required; renewals.** (a) Beginning with the 1997-1998 school year, no person shall serve as a teacher in a public school without first having obtained a license or credential from the department under this subpart. All licenses issued by the department shall be renewable every five years, provided the licensee continues to satisfy the board's licensing standards. All credentials issued by the department shall be renewable every year, up to a maximum of three years; provided the credential holder continues to satisfy the board's credentialing standards and actively pursues appropriate licensing.

(b) No person shall be issued a license or credential without having first paid the fee established by the board in accordance with chapter 91.

§ **-907 Hawaii teacher standards board revolving fund.** There is established within the state treasury a revolving fund to be known as the Hawaii teacher standards board revolving fund, into which shall be deposited all fees collected pursuant to section -906, and all other moneys received by the board in the form of appropriations, fines, grants, or donations. The revolving fund shall be administered by the department and used to pay the expenses of the board, including but not limited to the payment of all operational and personnel costs, and reimbursements to board members for travel expenses incurred.

§ **-908 Refusal, suspension, revocation, and reinstatement of licenses and credentials.** (a) The superintendent shall serve as the final adjudicator for appeals relating to licensing and credentialing, including but not limited to the

issuance or nonissuance of licenses and credentials, and the suspension, nonrenewal, and revocation of licenses and credentials.

(b) The superintendent shall establish procedures for the conduct of proceedings for the consideration of requests filed with the department. In every case to revoke or suspend a license or credential, the superintendent shall give the person concerned written notice and a hearing in conformity with chapter 91, and the superintendent shall provide for confidentiality of the proceedings to protect the parties. In all proceedings before it, the superintendent may administer oaths, compel the attendance of witnesses and production of documentary evidence, and examine witnesses. In case of disobedience by any person to any order of the superintendent or to any subpoena issued by the superintendent, or the refusal of any witness to testify to any matter that the person may be questioned lawfully, any circuit judge, on application of the board or a member thereof, shall compel obedience in the case of disobedience of the requirements of a subpoena issued by a circuit court or a refusal to testify.

(c) Any applicant who has been refused a license or credential, or any licensee or credential holder whose license or credential has been suspended or revoked, shall have the right to appeal the superintendent's decision to the circuit court of the circuit in which the applicant, licensee, or credential holder resides in the manner provided in chapter 91.

(d) Upon revocation of a license or credential, the department may disclose the name, birthdate, Social Security number, and any other pertinent information about the former holder of the license or credential for the purpose of exchanging information under chapter 315 with other national or state teacher certification agencies about school personnel who have had licenses, credentials, or other certificates revoked.

**§ -909 Penalty.** Any person who engages in the profession of teaching in a public school without first being issued a license or credential shall be fined not more than \$500. Any person who knowingly or intentionally violates this subpart by employing an individual as a public school teacher who does not possess a valid license or credential may be fined not more than \$500. All fines shall be deposited into the Hawaii teacher standards board revolving fund.

**§ -910 Repeal.** This subpart D, sections -901 to -910, is repealed on June 30, 2000.

## PART IV. PROVISIONS AFFECTING SYSTEM STRUCTURE

### A. Specific Definitions

**§ -1001 Specific definitions.** For the purposes of sections -1256 to -1265, "school" means any day care center, child care facility, headstart program, preschool, kindergarten, elementary, or secondary school, public or private, including any special school for children in the State.

### B. Accountability

**§ -1101 Reserved.**

**§ -1102 Student bias.** No person in the State, on the basis of sex, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational or recreational program or activity receiving state or county financial assistance or utilizing state or county facilities.

§ -1103 **Reporting of crime-related incidents.** The board shall adopt rules pursuant to chapter 91 to:

- (1) Require a report to appropriate authorities from a teacher, official, or other employee of the department who knows or has reason to believe that an act has been committed or will be committed, which:
  - (A) Occurred or will occur on school property during school hours or during activities supervised by the school; and
  - (B) Involves crimes relating to arson, assault, burglary, disorderly conduct, dangerous weapons, dangerous drugs, harmful drugs, extortion, firearms, gambling, harassment, intoxicating drugs, marijuana or marijuana concentrate, murder, attempted murder, sexual offenses, rendering a false alarm, criminal property damage, robbery, terroristic threatening, theft, or trespass;
- (2) Establish procedures for disposing of any incident reported; and
- (3) Impose, in addition to any other powers or authority the department may have to discipline school officials, appropriate disciplinary action for failure to report these incidents, including probation, suspension, demotion, and discharge of school officials.

§ -1104 **Indemnity upon reporting.** The State shall indemnify and hold harmless anyone participating in good faith in making a report pursuant to section -1103 from any civil liability that might otherwise be incurred or imposed by, or as a result of, the making of the report.

§ -1105 **Reserved.**

§ -1106 **Educational assessment and accountability; annual reports.**

(a) The department shall submit to the legislature and to the governor, at least twenty days prior to the convening of each regular legislative session, an educational status report that includes but is not limited to the following:

- (1) Results of school-by-school assessments of educational outcomes, including reference to such student performance standards and school-by-school assessment models as may be developed by the commission on performance standards and adopted by the board;
- (2) Summaries of school improvement plans;
- (3) Summary descriptions of the demographic makeup of the schools, with indications of the range of these conditions among schools within Hawaii;
- (4) Comparisons of conditions affecting Hawaii's schools with the conditions of schools in other states; and
- (5) Other such assessments as may be deemed appropriate by the board.

(b) The department shall provide electronic access to computer-based financial management, student information, and other information systems to the legislature and the auditor. The auditor shall submit to the legislature and the governor, at least twenty days prior to the convening of each legislative session, a fiscal accountability report that includes but is not limited to the following:

- (1) The financial analysis of expenditures by the department with respect to the following areas:
  - (A) Administration;
  - (B) Facilities and operations;
  - (C) Teacher support and development;
  - (D) Pupil support;
  - (E) Instructional support; and
  - (F) Classroom instruction;



- and
- (2) The measures of accuracy, efficiency, and productivity of the department, districts, and schools in delivering resources to the classroom and the student.

### C. Organization

**§ -1201 Department of education; board of education; superintendent of education.** (a) There shall be a principal executive department to be known as the department of education, which shall be headed by an elected policy-making board to be known as the board of education. The board shall have power in accordance with law to formulate statewide educational policy, adopt student performance standards and assessment models, monitor school success, and to appoint the superintendent of education as the chief executive officer of the public school system.

(b) The board shall appoint, and may remove, the superintendent by a majority vote of its members. The superintendent:

- (1) May be appointed without regard to the state residency provisions of section 78-1(b);
- (2) May be appointed for a term of up to four years; and
- (3) May be terminated only for cause.

**§ -1202 Department of education; statewide and regional administrative services.** The department shall serve as the central support system responsible for the overall administration of statewide educational policy, interpretation, and development of standards for compliance with state and federal laws, and coordination and preparation of a systemwide budget for the public schools. The department may establish regional administrative units to provide administrative support to the schools for personnel, fiscal, and procurement services. The regional administrative units may also be assigned responsibility for the administration and operation of special education programs and special schools.

**§ -1203 Principal; authority and responsibility.** The role of the principal shall include but not be limited to overseeing the day-to-day management of the school, the primary function of which is to develop and deliver instructional services to students in accordance with statewide educational policy and standards. The principal shall ensure that the curriculum facilitates the achievement of the statewide student performance standards adopted for the public school system.

**§ -1204 Learning support centers.** Beginning with the 1995-1996 school year and until June 30, 1999, school-level support for curriculum and instruction shall be provided through learning support centers to be governed by schools within each complex. The centers shall assist school personnel in the delivery of instructional services by providing support through curriculum development, student assessment, staff development, and resource allocation. The types of services offered and the manner in which these services are provided by the centers, as well as the prioritization and allocation of available resources, shall be determined by policies established by each complex. Any regional administrative units established by the department shall be assigned all administrative functions and provide administrative support to the learning support centers.

**§ -1205 Compensation; expenses.** Board of education members shall be allowed:

- (1) Compensation at the rate of \$100 per day for each day's actual attendance at meetings;
- (2) Transportation fares between islands and abroad; and
- (3) Personal expenses at the rates specified by section 78-15, while attending board meetings or while on official business as authorized by the chairperson, when the board meetings or official business require a board member to leave the island upon which the board member resides.

**§ -1206 Organization; quorum; meetings.** The board shall elect from its own membership a chairperson and a vice-chairperson. A majority of all members to which the board is entitled shall constitute a quorum to do business and the concurrence of a majority of all members to which the board is entitled shall be necessary to make any action of the board valid; provided that due notice shall have been given to all members of the board or a bona fide attempt shall have been made to give due notice to all members of the board to whom it was reasonably practicable to give due notice. Meetings shall be called and held, at the call of the chairperson or by a quorum, as often as may be necessary for the transaction of the department's business.

**§ -1207 School district advisory councils; duties.** (a) There shall be a school district advisory council in each school district. The number of members on the school district advisory council in the respective school districts shall be as follows:

- First school district (Hawaii): seven members;
- Second school district (Maui): five members;
- Third school district (Honolulu): five members;
- Fourth school district (Central Oahu): five members;
- Fifth school district (Leeward Oahu): five members;
- Sixth school district (Windward Oahu): five members;
- Seventh school district (Kauai): five members.

(b) Any other law to the contrary notwithstanding, the governor shall appoint the members of each school district advisory council. The appointments shall be made without consideration of the appointee's party affiliation or preference, or nonpartisanship. Each councilor shall serve for a term commencing upon the councilor's appointment and ending upon the expiration of the term of office of the governor. In addition to the number of members set forth in this section, each member of the board shall be an ex officio, nonvoting member of the school district advisory council in the member's at-large school board district.

(c) Each school district advisory council shall serve in an advisory capacity to the board and to the member or members of the board from its school district. Each school district advisory council shall:

- (1) Inform the board on educational matters of interest to the school district;
- (2) Disseminate information and interpret decisions and policies of the board to the people of the school district;
- (3) Act as an advisory body to the district superintendent of each school district, and, upon the district superintendent's request, assist the district superintendent in disseminating information, interpreting decisions and policies, and obtaining public reaction;
- (4) Present and explain local or school district public concern with the policies and administrative rules of the department;

- (5) Work with and among the several other school district advisory councils to ensure cooperation on educational matters of mutual interest and concern; and
- (6) Advise the board in the development of policies.

§ **-1208 Eligibility; expenses.** (a) Notwithstanding section 78-1(b), each councilor appointed by the governor need only reside in the school district in which the councilor is appointed to serve. No councilor shall hold any other public office under the state or county governments.

(b) Councilors shall serve without pay but shall be reimbursed for necessary expenses while attending meetings and while in the discharge of their responsibilities. Payments for expenses shall be made by warrants signed by the chairperson of the school district advisory council.

§ **-1209 Organizations; quorum; meetings.** (a) Each school district advisory council shall elect its own chairperson and may elect other officers that may be necessary to effectively carry out its functions.

(b) Part I of chapter 92 shall apply to all meetings of the council. Meetings shall be called and held, at the call of the chairperson or a quorum, as often as may be necessary to carry out its functions.

§ **-1210 Educational districts not applicable.** The educational districts established by section 4-1 shall not be applicable to, nor alter, the school board or departmental school districts, established by section 13-1, or the school districts established for administrative purposes by the department.

§ **-1211 Duties of superintendent.** (a) Under policies established by the board, the superintendent shall be designated as the chief executive officer of the public school system having jurisdiction over the internal organization, operation, and management of the public school system, as provided by law; and shall administer programs of education and public instruction throughout the State, including education at the preschool, primary, and secondary school levels, and such other programs as may be established by law.

(b) Except as otherwise provided, the superintendent shall sign all drafts for the payment of moneys, all commissions and appointments, all deeds, official acts, or other documents of the department. The superintendent may use a printed facsimile signature in approving appointments, contracts, and other documents. The superintendent, at such time as may be prescribed by the board, shall present to the board full annual reports of the principal transactions within the department during the last completed year, which reports together with such recommendations as the board may think proper, shall be presented to the governor and the legislature.

§ **-1212 Rules.** Subject to chapter 91, the board may adopt rules for the government of all teachers, educational officers, other personnel, and pupils, and for carrying out the transaction of its business.

§ **-1213 Seal.** The department shall adopt a seal, the impression of which shall be necessary to authenticate all of its appointments, commissions, final acts of the nature of record, and all other documents issued by it. Upon authorization by the superintendent, a facsimile impression of the seal may be used to authenticate these documents.

§ **-1214 Power of appointment, removal.** The department, from time to time, may appoint and remove such teachers, educational officers, and other person-

nel as may be necessary for carrying out the purposes of sections -301, -401, -501 to -510, -701, -1101 to -1106, -1201 to -1224, -1401 to -1405, -1501 to -1503, and -1601 to -1606, and regulate their duties, powers, and responsibilities, when not otherwise provided by law.

§ **-1215 Reallocation of vacant positions.** (a) To promote decentralization and facilitate restructuring of the department, the department of education, without regard to the position variance requirements of the department of budget and finance, may:

- (1) Reallocate existing vacant positions throughout the department;
- (2) Directly authorize and implement internal reorganization actions;
- (3) Reassign employee duties;
- (4) Authorize position classifications; and
- (5) Conduct recruitment;

provided that any action taken pursuant to this section shall be to redirect resources from the state and district offices to the individual schools and learning support centers.

(b) The governor, the department of human resources development, and the department of budget and finance shall facilitate, expedite, and assist the department of education in the implementation of its decentralization and staffing reallocation plan.

(c) The department of education shall submit an annual report of reallocations to the department of budget and finance by December 31 of each year.

§ **-1216 Authority to create temporary positions.** The department may create temporary positions as it deems necessary; provided that:

- (1) The department's expenditures shall not exceed its allocated budget;
- (2) The term of each position shall not exceed one year; and
- (3) The department shall report the creation of temporary positions to the department of budget and finance.

§ **-1217 Records, evidence.** The department shall cause all its proceedings, doings, and acts to be recorded, and these records, from time to time, shall be filed in the archives of the department. A certified copy of a record or any portion thereof, when signed by the superintendent under the seal of the department, shall be competent evidence of all it contains in any court.

§ **-1218 Publications by department.** The department may prepare or cause to be prepared, printed, and published, such reports, pamphlets, duplicate certificates, outlines of courses, etc., as in the discretion of the department may seem advisable, and sell or dispose of the publications. All sums of money received from the sale of the publications shall be deposited to the credit of the general fund of the State.

§ **-1219 Teachers' conventions.** The department may establish and maintain one or more teachers' conventions or institutes, or it may authorize and permit their establishment by and among its teachers, and may direct and authorize the attendance of teachers thereat, as a part of their duties, and may permit the closing of schools at specified limited times, in order to permit their attendance at the conventions or institutes.

§ **-1220 Public library system; board control.** The board, through the state librarian, shall have direct control of the public library system, but not

including school libraries. The board may adopt rules under chapter 91 for the purpose of this section.

§ -1221 **Bonds for return of military equipment.** The department may execute and deliver bonds in the name of the State to the United States, as provided by any act of Congress, to insure the safe return of any public animals, tentage, uniforms, arms, equipment, and means of transportation procured by the department from the United States for use in the public schools of the State maintaining a course or courses in military training as provided by act of Congress.

§ -1222 **Gifts.** The board may receive and manage moneys or other property, real, personal, or mixed, that may be given, bequeathed, devised, or in any manner received from sources other than the legislature or any federal appropriation for the purposes of the department. All such moneys received by, or on behalf of, the department shall be paid into the state treasury, and all such moneys are appropriated for the use of the department. The board shall cause to be kept suitable books of accounts wherein shall be recorded each gift, the essential facts of its management, and the expenditure of the income.

§ -1223 **Reserved.**

§ -1224 **Student-centered schools; programs and administration.** (a) Any public school, up to a total of twenty-five schools, may establish a student-centered school; provided that:

- (1) Any public school that establishes a student-centered school shall be exempt from all applicable state laws; except those regarding:
  - (A) Collective bargaining under chapter 89; provided that the exclusive representatives and the employers defined in chapter 89 may enter into agreements that contain cost and noncost items to facilitate decentralized decision-making;
  - (B) State procurement laws; and
  - (C) Religious, racial, or sexual bias, and health and safety requirements;
- (2) The school establishes a local school board as its governing body composed of, at a minimum, one representative from the following participant groups:
  - (A) Principals;
  - (B) Instructional staff members selected by the school instructional staff;
  - (C) Support staff selected by the support staff of the school;
  - (D) Parents of students attending the school selected by the parents of the school;
  - (E) Student body representatives selected by the students of the school; and
  - (F) The community at-large selected by the board of education;
- (3) The local school board may formulate school-based educational policy and goals in accordance with statewide educational performance standards, adopt school performance standards and assessment mechanisms, monitor school success, and may select the principal as the chief executive officer of the school in accordance with chapter 89. The principal shall consult and work collaboratively with the local school board and have jurisdiction over the internal organization, operation, and management of the school;

- (4) The local school board has developed a detailed implementation plan containing the elements prescribed under subsection (b) for a student-centered school that has been approved by three-fifths of the school's administrative, support, and teaching personnel, and parents; provided that the school personnel may request their bargaining unit representatives to certify and conduct the elections for their respective bargaining units;
  - (5) The detailed implementation plan has been submitted to the board of education for review;
  - (6) The detailed implementation plan assures compliance with statewide student performance standards; and
  - (7) No student-centered schools shall charge tuition.
- (b) The detailed implementation plan for the student-centered school shall include but not be limited to the following:
- (1) A description of the administrative and educational framework;
  - (2) Specific student outcomes to be achieved;
  - (3) The curriculum, instructional framework, and assessment mechanisms to be used to achieve student outcomes;
  - (4) Governance structure of the school;
  - (5) Facilities management plan; and
  - (6) Annual financial and program audits.
- (c) The board of education shall review the proposed student-centered school plan to assure that it complies with statewide educational performance standards. Unless the board of education finds that the plan conflicts with statewide educational performance standards, the plan shall become effective within thirty days after its submission. If the board of education finds a conflict with statewide educational performance standards, it shall notify the local school board of the finding in writing to enable the local school board to appropriately amend the plan to resolve the conflict.
- (d) Student-centered schools shall receive an allocation of state general funds on a per student basis that is equal to the statewide per pupil expenditure for average daily attendance; provided that the allocation for self-contained special education students and for other special education students shall be adjusted appropriately to reflect the additional expenses incurred for the students in these programs.
- (e) All federal and other financial support for student-centered schools shall be equal to all other public schools; provided that if administrative services are provided to the school by the department, the school shall reimburse the department for the actual costs of the administrative services in an amount that does not exceed 6.5 per cent of the school's allocation. Any student-centered school shall be eligible to receive any financial grant or award for which any other public school may submit a proposal. All additional funds that are generated by the local school board shall be considered supplementary and may be expended at the discretion of the local school board.
- (f) The department shall require every student-centered school to conduct self-evaluations annually. The self-evaluation process shall include but not be limited to the following:
- (1) The identification and adoption of benchmarks to measure and evaluate administrative and instructional programs as provided in this section; and
  - (2) The impact upon the students of the student-centered school.
- The department shall evaluate each student-centered school four years after its establishment to assure compliance with the statewide student performance standards. Upon a determination by the board of education that student achievement within a student-centered school does not meet the student performance standards,

the board of education, upon a two-thirds majority vote, may deny the continuation of the student-centered school.

§ -1225 Reserved.

§ -1226 **Mandate to initiate school/community-based management system.** The department, through the board and its superintendent, shall formulate policies, including criteria and procedures to determine which schools and learning support centers shall participate in the system, to initiate a school/community-based management system in the public schools.

§ -1227 **Educational objectives.** The board shall formulate such policy and exercise such control as may be necessary to define a common set of educational goals that the schools subject to the school/community-based management system shall be responsible for fulfilling. The board shall also be responsible for formulating standards for measuring the efforts of each participating school toward achieving those goals each year. The participating schools shall be free to use all reasonable means to accomplish those goals with the resources available to them.

§ -1228 **Waiver of policy, rule, or procedures.** Any state agency that may be required to act under state law on a matter affecting an individual school, its school community, or a learning support center shall waive otherwise applicable policies, rules, or procedures when requested to do so by a school or a learning support center participating in the school/community-based management system unless the agency, within thirty days, can justify a denial to the appropriate authority. The board shall adopt procedures necessary to process waivers initiated by schools or learning support centers subject to the school/community-based management system. This section shall apply to collective bargaining agreements as provided for in all relevant collective bargaining agreements negotiated pursuant to chapter 89.

§ -1229 **Rules.** The board may adopt rules under chapter 91 to implement sections -302, -1226 to -1228, and -1608.

§ -1230 **Department powers and duties.** (a) The department shall have entire charge and control and be responsible for the conduct of all affairs pertaining to public instruction. The department may establish and maintain schools for secular instruction at such places and for such terms as in its discretion it may deem advisable and the funds at its disposal may permit. The schools may include high schools, kindergarten schools, schools or classes for pregrade education, boarding schools, and evening and day schools. The department may also maintain classes for technical and other instruction in any school where there may not be pupils sufficient in number to justify the establishment of separate schools for these purposes.

(b) The department shall regulate the courses of study to be pursued in all grades of public schools and classify them by such methods as the department deems proper; provided that the course of study and instruction in the first eight grades shall be so regulated that not less than fifty per cent of the study and instruction in each school day is devoted to the oral expression, the written composition, and the spelling of the English language, except for special projects using the Hawaiian language as approved by the board.

(c) Nothing in this section shall interfere with those persons attending a summer school.

§ -1231 **Schools; opening and closing.** The board may open new schools or close existing schools.

**§ -1232 Public schools special fees and charges; standards; grouping of students.** (a) No equipment, material, or other fees shall be assessed against any pupil in any school, except that the department may assess and collect special fees and charges from pupils for co-curricular activities and from pupils who negligently break, damage, lose, or destroy school books, equipment, or supplies. Any pupil found to be responsible for the loss, destruction, breakage, or damage of school books, which shall include library and textbooks, of equipment, or of supplies, shall make restitution to the school in any manner, including the payment by the pupil or the pupil's parents of the actual replacement costs.

(b) No pupil shall be required to make restitution in any manner unless the pupil and the pupil's parents or guardians have been notified and have been given an opportunity to be heard before the principal of the school on the charges that the pupil was responsible for the loss, destruction, breakage, or damage of school books, equipment, or supplies.

(c) If the principal, upon a hearing on the charges, has reasonable cause to believe that the pupil is responsible for the loss, destruction, breakage, or damage of school books, equipment, or supplies, the principal shall design a restitution program that shall be submitted to the pupil and the pupil's parents or guardian for agreement in writing.

If restitution is made in this fashion, then no information about the charges, the hearing, and the actions taken shall be communicated to any person not directly involved in the proceedings.

If the pupil and parent or guardian do not agree with the determination made by the principal, the principal shall report to the district superintendent the determination and the findings made by the principal, including all the records and documents regarding the investigation, for any further action.

(d) Notwithstanding any other provisions in this section to the contrary, the State may elect to bring any appropriate action for the recovery of all damages to school properties. Nothing in this section shall limit the right of the State to bring any action against any person to recover the damages.

(e) Special fees and charges collected from pupils for co-curricular activities shall be deposited into insured checking or savings accounts and expended by each individual school under rules adopted by the department pursuant to chapter 91.

(f) Special fees and charges collected from pupils who negligently break, damage, lose, or destroy school books, equipment, or supplies shall be deposited in a fund and expended by the department under rules adopted pursuant to chapter 91.

(g) The department may continue to group pupils within any public school in accordance with their abilities and educational needs.

**§ -1233 Public schools; attendance.** (a) Except as authorized by section -511, no child shall attend any public school unless the child will be at least six years of age before January 1 of the school year; provided that:

- (1) A child attending a school that convenes after the regular school schedule shall be six years of age on or before one hundred twenty-five days following the date the school shall convene; and
- (2) The department may establish procedures and criteria to determine the psychological and physiological readiness of children for public school and may grant an exception in the case of a child who is found to be ready.

(b) All teachers who teach in the first and second grades and principals of public schools shall enforce this section and require proof of age by birth certificates or certificates of registration, or if none can be obtained, then by satisfactory evidence.



§ **-1234 Attendance compulsory; exceptions.** (a) Unless excluded from school or excepted from attendance, all children who will have arrived at the age of at least six years, and who will not have arrived at the age of eighteen years before January 1 of any school year, shall attend either a public or private school for and during the school year, and any parent, guardian, and other person having the responsibility for, or care of, a child whose attendance at school is obligatory shall send the child to some such school. Attendance shall not be compulsory in the following cases:

- (1) Where the child is physically or mentally unable to attend school (deafness and blindness excepted), of which fact the certificate of a duly licensed physician shall be sufficient evidence;
- (2) Where the child who has reached the fifteenth anniversary of birth is suitably employed and has been excused from school attendance by the superintendent or the superintendent's authorized representative, or by a family court judge;
- (3) Where, upon investigation by the family court, it has been shown that for any other reason the child may properly remain away from school;
- (4) Where a child has graduated from high school; or
- (5) Where the child is enrolled in an appropriate alternative educational program as approved by the superintendent or the superintendent's authorized representative in accordance with the plans and policies of the department, or notification of intent to home school has been submitted to the principal of the public school that the child would otherwise be required to attend in accordance with department rules adopted to achieve this result.

(b) Any employer who employs a child who is excused from school attendance in accordance with subsection (a)(2) shall notify the child's school within three days upon termination of the child's employment.

§ **-1235 Emergency measures.** The department of health may implement emergency measures to refuse, modify, or limit attendance at any school in the State pursuant to section 321-1 if it is determined that there is imminent danger of an epidemic or serious outbreak of communicable disease.

§ **-1236 Exclusion from school.** (a) If for any reason a child becomes a detriment to the morals or discipline of any school, the child may be precluded from attending school by the principal, with the approval of the district superintendent. The department shall seek the active participation of other public and private agencies in providing help to these children before and after they have left school. An appeal may be taken on behalf of the child to the superintendent of education within ten days from the date of such action.

(b) Any child who is found to be in possession of a firearm while attending school shall be excluded from attending school for not less than one year. The due process procedures of chapter 8-19, Hawaii administrative rules, shall apply to any child who is alleged to be in possession of a firearm while attending school. The superintendent may modify the exclusion of a child found to be in possession of a firearm while attending school on a case-by-case basis. If a child is excluded from attending school, the superintendent shall ensure that substitute educational activities or other appropriate assistance shall be provided. The superintendent shall submit to the United States Department of Education, the board, and the legislature an annual report indicating the number of students excluded, the types of firearms found in their possession, and the schools from which they were excluded.

(c) No child who is seventeen years of age or over shall be admitted to the ninth grade of a public four-year high school, and no child who is eighteen years of

age or over shall be admitted to the tenth grade of a public senior high school, except upon the written permission of the superintendent when in the superintendent's opinion the facts warrant admission.

§ **-1237 Penalty.** If any child of school age persists in absenting oneself from school, the family court judge, upon a proper petition, citation, or complaint being made by the school teacher or any other officer or agent of the department, or police officer, or any other person, shall cause the child, and the father or mother, guardian, or other person having charge of the child, to be summoned to appear before the judge. Upon its being proved that the person responsible for the child had not used proper diligence to enforce the child's regular attendance at school, the responsible party shall be guilty of a petty misdemeanor. This section shall not apply to any child not liable to compulsory attendance at school.

§ **-1238 Enforcement.** The department shall be charged with the enforcement of sections -1234 to -1237. Nothing in this section shall relieve any chief of police or police officer of the chief's or officer's responsibility for the enforcement of these sections, but their enforcement shall be subject to the plans and policies of the department.

§ **-1239 Attendance records; availability to authorized police officers.** Dates of attendance of a student shall be made available to authorized police officers upon request.

§ **-1240 Permit to leave grounds.** All principals in the public schools, upon the written request of the parent, guardian, or other person having the care and control of any pupil attending any public school, shall permit any such pupil to leave the school grounds during intermissions. Any principal granting such a permit shall not be held liable for the action of the pupil during the intermissions and while the pupil remains outside of the school grounds.

§ **-1241 Religious education.** (a) The department shall provide for the release of, and shall release, any pupil in any public school from attendance at the public school for a period not to exceed sixty minutes each week during the school year, on such days and during such school hours as the department shall designate, for the purpose of receiving religious instruction from the religious organization of the pupil's choice when the release is requested in writing by a parent, guardian, or other person having custody or control of the pupil. Actual attendance at the sessions of the religious instruction shall count as attendance at the public schools for all purposes where attendance forms the basis of computation.

(b) The privilege of this release shall be withdrawn by the department in case the pupil does not actually attend the sessions of religious instruction. No teacher of the public schools shall participate in religious instruction during the school hours for which the teacher is employed to teach in the public schools, and no public funds shall be used directly or indirectly for religious instruction, at any time when its use would otherwise be required in connection with the regular program of the school.

§ **-1242 Religious holy days.** The board shall release any public school student from school attendance for the purpose of observing religious holy days that fall on regularly scheduled school days, when the release is requested in writing by a parent, guardian, or other person having custody or control of the pupil. Actual attendance at observances shall count as an excused absence at the public schools for all purposes where attendance forms the basis of computation.

§ -1243 **Punishment of pupils limited.** No physical punishment of any kind may be inflicted upon any pupil, but reasonable force may be used by a teacher in order to restrain a pupil in attendance at school from hurting oneself or any other person or property, and reasonable force may be used as defined in section 703-309(2) by a principal or the principal's agent only with another teacher present and out of the presence of any other student but only for the purposes outlined in section 703-309(2)(a).

§ -1244 **School districts.** For the better control and management of the public schools, the department may designate school districts, establish their boundaries, and alter the same from time to time as in its discretion it deems most advisable. These districts shall be so arranged that there shall be no unassigned locality.

§ -1245 **Attend school in what district.** All persons of school age shall be required to attend the school of the district in which they reside, unless it appears to the department to be desirable to allow the attendance of pupils at a school in some other district, in which case the department may grant this permission.

§ -1246 **Records of pupils; release from attendance.** All schools shall keep a correct register of the names, sex, age, and nationality, as far as ascertainable, date of entering school, and the places of residence of the children attending their respective schools. No school shall grant a release to any child under eighteen years of age, who is registered as attending the child's school, for the purpose of attending another school, unless the consent and approval of the parents or guardians of the child is given in writing with the facts and reasons therefor. The register shall be carefully preserved, and as often as the department shall direct, the register or a true copy thereof shall be filed in the office of the department.

§ -1247 **Transfer to another school.** No school shall receive any child under eighteen years of age, who has attended another school of the same class in the same district, unless the child produces to the school to be entered, a certificate of release of the school last attended by the child. If the child applies to attend a school of higher grade, a certificate of proficiency shall be required or a lawful excuse for its absence. The children from one district desiring to enter a school in another district may be received or admitted upon producing a certificate of release from the school last attended in the other district.

§ -1248 **Schools not to sell merchandise, etc.** It shall be unlawful for any public school, without the written permission of the department, to operate stores or to sell merchandise, with the following exceptions: school lunches, milk, ice cream, candy, things made or grown at the school as part of the educational program, and in cases where classroom efficiency, uniformity, or standardization of particular supplies is essential, textbooks, equipment, and necessary school supplies and equipment, may be sold by any school. The department, with the advice of the comptroller, shall adopt rules in conformance with chapter 91 necessary for the purposes of this section.

§ -1249 **Use of school grounds by county recreation departments.** The board, upon request by a county, shall make school grounds available after school hours in the county where the request is made, for use by the county requesting the same whenever this can be done without interference with the normal and usual activities of the school and its pupils.

**§ -1250 Use of school facilities for recreational and community purposes.** All public school buildings, facilities, and grounds shall be available for general recreational purposes, and for public and community use, whenever these activities do not interfere with the normal and usual activities of the school and its pupils. Any other law to the contrary notwithstanding, the department shall adopt rules under chapter 91 as are deemed necessary to carry out the purposes of this section and may issue licenses, revocable permits, concessions, or rights of entry to school buildings and grounds for such periods of use as deemed appropriate by the department. All such dispositions, including those in excess of fourteen days, need not be approved by the board of land and natural resources; provided that approval by the board of land and natural resources shall be required when the dispositions are for periods in excess of a year. The department may assess and collect fees and charges from the users of school buildings, facilities, grounds, and equipment. The fees and charges shall be deposited into a separate fund and expended by the department under rules as may be adopted by the board.

**§ -1251 Use of school facilities for after school child care.** The department may enter into agreements and contracts with individuals, organizations, or agencies for the use of public school buildings, facilities, and grounds for the operation of after school child care programs. The board shall issue such rules as are necessary to carry out the purposes of this section.

**§ -1252 Use of school buildings.** The fullest freedom shall be given to citizens of the State to use for lawful purposes all public school buildings throughout the State during the hours the structures are not in use for strictly educational purposes; provided that the person vested with the proper authority over the building shall issue a permit to the applicant, when the proposed use is shown to be lawful by the applicant.

**§ -1253 Sale of school lands unnecessary for school purposes.** The chairperson of the board of land and natural resources is hereby requested, upon the recommendation and approval of the superintendent, to sell any state lands, including the buildings thereon, once used but no longer necessary for school purposes.

**§ -1254 Unauthorized vehicles on school or public library grounds.** Any unauthorized vehicle parked on school or public library grounds may be towed away at the owner's expense, or the owner or driver of the vehicle may be arrested by any police officer without warrant, on complaint of the principal, librarian, or other person in charge of the school or library. Notwithstanding any other law to the contrary, upon conviction for parking an unauthorized vehicle on school or public library grounds, the owner or driver of the vehicle shall be fined not more than \$50.

**§ -1255 Vandalism damage to public school property.** (a) Any pupil found to be responsible for an act of vandalism against any public school, building, facility, or ground shall make restitution in any manner, including monetary restitution by the pupil or pupil's parents, or guardian, or both.

This section shall be in addition to, and shall in no way limit the provisions of any other law concerning, offenses against property rights.

(b) No pupil, parent, or guardian shall be required to make restitution in any manner unless the pupil and the parents or guardian have been notified and have been given an opportunity to be heard, on any report of vandalism involving the pupil, and the pupil, parent, or guardian have executed a written agreement to make restitution.

(c) The principal of the school in which the vandalism occurred shall make or order an investigation of the vandalism. If after the investigation, the principal has reasonable cause to believe that a specific pupil is responsible for the vandalism, the principal shall schedule a conference with the pupil and the pupil's parents or guardian. Except for the principal of the school in which the vandalism occurred, the pupil and the parents or guardian, no other person shall be permitted to be in the conference for any reason.

(d) At the conference, the principal of the school in which the vandalism occurred shall present the findings of the investigation and the requirements of restitution to the pupil and parents or guardian.

If the pupil and the parents or guardian agree with the findings of the principal and the manner in which restitution is to be made, the principal and the pupil and parent or guardian shall execute a written agreement which shall specify the manner in which restitution is to be made.

Agreements shall be made only for damages that do not exceed \$3,500.

If restitution is made in this fashion, then no information about the investigation, conference, and the actions taken shall be communicated to any person not directly involved in the proceedings.

If the pupil and parent or guardian do not agree with the findings made by the principal, the principal shall report the findings, including all the records and documents regarding the investigation and conference, to the district superintendent, who shall review the findings and may refer the matter to the attorney general for any further action pursuant to section 577-3.

(e) If the damages exceed \$3,500, the principal shall report the matter to the district superintendent, who shall refer the matter to the attorney general for any further action pursuant to section 577-3.

(f) Notwithstanding any provisions in this section to the contrary, the State may elect to bring any appropriate action for the recovery of all damages to school properties. Nothing in this section shall limit the right of the State to bring an action against any person to recover these damages.

**§ -1256 Immunization upon entering school; tuberculosis clearance.**

(a) No child shall attend any school in the State unless the child presents to the appropriate school official certification from a licensed physician stating that the child has received immunizations against communicable diseases as required by the department of health.

(b) No child shall be admitted to attend any school for the first time in the State unless the child presents to the appropriate school official certification from a licensed physician or other authorized personnel stating the child has received a tuberculin test or x-ray and is free from tuberculosis in a communicable form.

**§ -1257 Provisional entrance to school.** (a) A child may enter school provisionally upon submitting written proof from a licensed physician or an authorized representative of the department of health stating that the child is in the process of receiving the required immunizations. Further certification showing that the required immunizations have been completed must be submitted to the appropriate school official no later than three months after the child first entered the school.

(b) Provisional entrance to school may be suspended by the department of health when there is danger of an epidemic from any of the communicable diseases for which immunization is required.

**§ -1258 Exemptions.** A child may be exempted from the required immunizations:

- (1) If a licensed physician certifies that the physical condition of the child is such that immunizations would endanger the child's life or health; or
- (2) If any parent, custodian, guardian, or any other person in loco parentis to a child objects to immunization in writing on the grounds that the immunization conflicts with that person's bonafide religious tenets and practices. Upon showing the appropriate school official satisfactory evidence of the exemption, no certificate or other evidence of immunization shall be required for entry into school.

**§ -1259 Exemptions from immunization; not recognized; epidemic conditions.** If at any time there is, in the opinion of the department of health, danger of an epidemic from any of the communicable diseases for which immunization is required under sections -1256 to -1265, no exemption from immunization against the disease shall be recognized. Quarantine shall be a legal alternative to immunization.

**§ -1260 Immunization of indigent children.** The department of health shall provide all immunizations and tuberculin tests to comply with sections -1256 to -1265, as far as public funds will permit, to each child whose parents, guardians, or custodians cannot afford to have the child immunized or tested for tuberculosis, and who have not been exempted under section -1258. Nothing in this section shall preclude the department of health from distributing immunizations and vaccines to physicians or other authorized persons as required by law or by the rules of the department of health.

**§ -1261 Physical examination required.** No child shall be admitted to any school for the first time in the State unless the child presents to the appropriate school official a certification from a licensed physician stating that the child has undergone a physical examination. The physical examination shall be performed within a year of the date of entry into school. A child may enter school provisionally upon submitting written proof from a licensed physician or other authorized representative of the department of health stating that the child is in the process of undergoing a physical examination. Further certification showing that the required physical examination has been completed must be submitted to the appropriate school official no later than three months after the child first entered the school.

**§ -1262 Health certificates.** The department of education shall provide health certificate forms for immunization and physical examination to the schools, private physicians, and authorized personnel of the department of health. Any immunization record signed by a licensed physician may be accepted by the appropriate school official as certification of immunization if the information is transferred to the health certificate form and verified by the appropriate school official.

**§ -1263 Notification for noncompliance.** If a child does not complete the immunizations required under section -1256 or the physical examination required under section -1261 within the three-month period provided after provisional entry into school, the department of education shall refer the child to the department of health. The department of health shall cause a notice to be sent to the parent of the child stating that if the required immunizations or physical examination is not completed within thirty days of the date of the notice, the child shall not be admitted to school.

**§ -1264 Rules.** The department of health shall adopt rules under chapter 91 relating to immunization and tuberculin testing under sections -1256

to -1265. Immunizations required, and the manner and frequency of their administration, shall conform with recognized standard medical practices. The list of diseases and minimum requirements for protection under sections -1256 to -1265 may be revised whenever the department of health deems it necessary for the protection of public health.

§ **-1265 Enforcement.** The department of health shall administer and enforce the immunization and tuberculin test requirements under sections -1256 to -1265.

## PART V. PROVISIONS AFFECTING FINANCIAL STRUCTURE

### A. Specific Definitions

§ **-1301 Definitions.** For the purposes of sections -1406 to -1409: "Enrollment" means the number of students registered in the regular public schools, with each regular student and each special student being counted as one. "Moneys" means funds which are not committed to positions.

### B. Budget

§ **-1401 School system financial accountability.** (a) Beginning with the 1995-1997 fiscal biennium, the department's administrative expenditures shall not exceed 6.5 per cent of the total department operating budget unless approved by the legislature.

(b) The department shall not transfer any funds appropriated under the school-based budgeting program EDN 100 of the state budget, except for unforeseeable circumstances that pose a threat to the health and safety of personnel and students, and subject to approval by the governor and notification to the legislature.

§ **-1402 School-based budget flexibility.** Beginning with the 1995-1997 fiscal biennium, the department shall implement school-based budget flexibility for schools, complexes, and learning support centers. The flexibility shall be limited to the school-based budgeting program EDN 100 of the department.

§ **-1403 School budget, general fund.** The salaries of the superintendent, teachers, office force, and all other employees of the department, and all items of general expense, including books, materials, supplies, and equipment, shall be included in the departmental estimate in such form and detail as the director of finance shall require, together with such statistical and supporting data as the director may request.

§ **-1404 Department of education storeroom; revolving fund.** There shall be a storeroom established by the department to provide schools a source for commonly used educational, office, and custodial supplies. There is established a revolving fund to be known as the "storeroom revolving fund," into which shall be deposited the receipts from charges made to schools for the supplies and cost of issuing the supplies from the storeroom and transfers from other accounts or funds. Receipts and transfers deposited into the storeroom revolving fund may be expended to purchase educational, office, and custodial supplies, and equipment and services needed to operate the storeroom. Balances in excess of \$400,000 at the end of each fiscal year shall lapse into the general fund.

§ **-1405 Inactive student activity accounts.** Student activity funds that are left in the school for a period of five years after the graduation of the class shall be deposited into the nonappropriated local school fund account unless the graduating class donates, in writing, the funds to the school within the five-year period.

§ **-1406 School priority program; established.** (a) There is established within the department a school priority program to augment regular instruction and other educational services at the discretion of the individual public schools. Further, it is the intent of the legislature that the school priority program promote the equitable distribution of educational resources statewide, strengthen the scope of decision making, increase flexibility in resource allocation at the school level, and provide a systematic method of conforming resource allocation to the unique needs and priorities of individual schools.

(b) All moneys to carry out the purposes of the school priority program under this section to section -1409 shall be allocated by the legislature through appropriations out of the state general fund.

(c) The department shall include in its budgetary request for each upcoming fiscal period, the amounts necessary to effectuate the purposes of this section to section -1409.

§ **-1407 Distribution of resources.** The superintendent shall allot the moneys of the school priority program to the school districts based on enrollment. In the allotment of positions to the districts, the superintendent shall calculate each district's entitlement based on enrollment and may deploy one instructional resource augmentation position for each two-hundred-fifty students enrolled in each school; provided that all positions shall be deployed.

§ **-1408 Use of resources by schools.** School principals shall consult with teachers, parents, and students to solicit their advice on the use of moneys and positions. Prior to expending moneys and implementing position assignments, principals shall submit plans for the use of the moneys and positions to their district superintendents who shall review the plans for conformance with departmental policies and rules. Upon approval of the plans, moneys may be expended by the principals for supplies, textbooks, equipment, and services. Positions may be used to meet the unique needs of the schools.

§ **-1409 Departmental controls.** The superintendent shall develop and implement appropriate planning procedures and follow-up accountability reports, without regard to chapter 91, to ensure sound planning, control, and accountability in the use of moneys allocated by the legislature to the school priority program. The procedures and reports, however, shall recognize the need for providing the schools latitude and discretion to determine their needs and priorities, and shall avoid imposing undue amounts of paperwork and administrative burdens on the schools.

The department shall submit an annual report to the legislature, which shall include but not be limited to an accounting of how funds were used by the schools.

§ **-1410 Summer schools; funds, expenditures.** All moneys received by and for the public summer schools from tuition and other fees or from any other source shall be deposited in a special summer school fund; and except as otherwise provided by the legislature, all expenditures for the operation of public summer schools shall be made from this fund.



C. Federal Funding

§ -1501 **Administration and use of federal funds, including pregrade education.** (a) The board, designated as the administrators of such funds as may be allotted to the State under federal legislation for public educational purposes, subject to such limitations as may be imposed by congressional action, shall use and expend the funds:

- (1) To improve the program of the public schools of the State, including any grades up to the fourteenth grade or such lower grade as shall be prescribed as a maximum for such purposes by the act of Congress concerned, by expanding the educational offerings, particularly in the rural districts;
- (2) For the payment of salaries to teachers;
- (3) To employ additional teachers to relieve overcrowded classes;
- (4) To adjust the salaries of teachers to meet the increased cost of living, within such limits as may be fixed by, and pursuant to, state law;
- (5) To provide for the purchase of supplies, apparatus, and materials for the public schools; and
- (6) For any of such purposes and to such extent as shall be permitted by the acts of Congress concerned.

(b) The board shall organize and conduct a program of public pregrade education to the extent that funds provided therefor by the United States government are, or from time to time may become, available. In establishing and carrying on the pregrade education, any such federal funds shall be expended during any school year as nearly as practicable in each of the school supervisory districts of the State in the proportion that the number of inhabitants of each district of less than six years of age bears to the total number of the inhabitants of the entire State within the age limits, as shown by the latest report of the department of health preceding the opening of the school year.

§ -1502 **Custodian of federal funds.** The director of finance is designated as custodian of all funds received as the state apportionment under any federal appropriations for public educational purposes and the director shall disburse the funds, pursuant to the requirements, restrictions, and regulations of the federal acts under which the funds may be provided, on vouchers approved by the board, or by any subordinate thereunto duly authorized by the board.

§ -1503 **Authority to secure federal funds.** The department, director of finance, and governor may take such steps and perform such acts as may be necessary or proper in order to secure any such federal funds for the purposes specified in sections -1501 and -1502.

**PART VI. PROVISIONS AFFECTING FACILITIES**

A. Facilities and Equipment

§ -1601 **Noise and climate control at school facilities.** (a) The department shall plan for, and request appropriations necessary to implement, acoustic noise control and air conditioning of existing and new school facilities in areas that are susceptible to extremes of temperature or affected by aircraft, traffic, and other noise. The department shall develop appropriate standards and consider local conditions for deciding whether acoustic noise control and air conditioning of existing and new school facilities are required for effective classroom instruction. In all cases where acoustic treatment of school facilities is planned, the department shall utilize

the services of individuals qualified by training and experience to recommend appropriate noise control procedures and components. Acoustic noise control and air conditioning shall be given equal weight as all other factors in the criteria used by the department in setting priorities for school construction and renovations.

(b) In any case where air conditioners are installed in a particular school, the department may require that the approximate cost of electricity and maintenance for air conditioners not installed by the department of accounting and general services be paid by a private entity until the department establishes temperature and noise standards and a policy relating to air conditioning.

§ **-1602 School inspection program.** The department of education, in consultation and cooperation with the department of health and the department of accounting and general services, shall establish a school inspection program to maintain high levels of hygiene, sanitation and health, safety, maintenance, and physical appearance for each school for the benefit of students, administrators, and staff. The program shall include but not be limited to the following:

- (1) The utilization of checklists that reflect basic standards;
- (2) The involvement of students, parents, and staff; and
- (3) Regularly scheduled announced inspections and unannounced inspections of school grounds, restrooms, cafeterias, locker rooms, classrooms, and other facilities.

§ **-1603 Donated school equipment and fixtures; repair and maintenance responsibility.** (a) The department may accept donations of school equipment or fixtures on behalf of the department, individual schools, or school complexes. Donations that meet current educational specifications or exceed existing educational specifications shall be deemed acceptable in instances where the donations enhance the school environment or improve the administration of school programs in accordance with criteria established by the department pursuant to chapter 91.

(b) In the case of fixtures that are to be installed in existing or new school facilities, the department of accounting and general services shall thereafter be responsible for the repair and maintenance of the donated fixtures. In the case of equipment that supports the school's curriculum and programs, the department of education shall thereafter be responsible for the repair and maintenance of the donated equipment.

(c) The department may accept a donation only if the equipment or fixture is useful to enhance the physical environment or safety of a school, or is a benefit to learning.

(d) The private source making a donation shall not be liable upon any claim for injury arising from the donated equipment or fixture; provided that this provision shall not affect the responsibility or liability of manufacturers of defective products nor shall it reflect the responsibilities of negligent persons who cause dangerous conditions that result in injury.

§ **-1604 School-level minor repairs and maintenance accounts.** (a) The department shall establish school-level minor repairs and maintenance accounts for the use of each public school, which shall not exceed \$8,000 per school. The accounts shall be comprised of funds appropriated to the department for school-level minor repairs and maintenance and shall not be used for any other purpose, nor shall any other funds be deposited into the accounts.

(b) Funds in this account shall be expended at the direction of the school principal to contract for minor repairs and maintenance. Any funds appropriated for

this purpose that are unencumbered at the close of each fiscal year shall lapse into the general fund.

(c) Each school principal, through the superintendent, shall submit a report annually to the department of accounting and general services on expenditures made from this account.

**§ -1605 Prioritization of repair and maintenance.** Each school shall meet with the department of accounting and general services on an annual basis to advise the department of school needs. Before any repair and maintenance projects for the upcoming fiscal year are implemented, each individual school administration shall prioritize and approve its repair and maintenance needs, and approve the scope of the implementation plan for the individual projects. After schools have prioritized their repair and maintenance projects, a statewide list shall be prepared, reviewed, and approved by the department of education; provided that the department may make adjustments among schools and districts. Each school repair and maintenance priority listing shall be approved by the individual school administration and submitted to the department of accounting and general services for implementation. The department of accounting and general services shall implement the school repair and maintenance program in accordance with the priorities set forth by the individual school administration.

**§ -1606 Public school facilities.** The department may enter into such contracts, lease-purchase agreements, or other transactions as may be necessary for the acquisition of public school facilities on such terms as it may deem appropriate, subject to the provisions imposed upon it by law.

**§ -1607 Reserved.**

**§ -1608 Classroom cleaning project; established.** (a) There is established a classroom cleaning project in schools designated to participate in school/community-based management. Each SCBM school, through its council, may develop mechanisms to provide for classroom cleaning, including but not limited to having parent, student, or other community groups clean the classrooms on a regular, continuing basis.

(b) SCBM schools may use any available resources to achieve the purposes of this section; provided that no full-time custodial staff currently employed at the school shall be displaced."

SECTION 3. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

**"§36-27 Transfers from special funds for central service expenses.** Except as provided in this section, and notwithstanding any other law to the contrary, from time to time the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special summer school fund under section [298-3.5;]       -1410;
- (2) School cafeteria special funds of the community colleges and the department of education;
- (3) Special funds of the student housing, summer session, division of continuing education and community service, campus center, and bookstores of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center capital and operations special fund;

- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Spouse and child abuse special account under section 346-7.5;
- (11) Spouse and child abuse special account under section 601-3.6;
- (12) Funds of the employees' retirement system created by section 88-109;
- (13) Unemployment compensation fund established under section 383-121;
- (14) Hawaii hurricane relief fund established under chapter 431P;
- (15) The University of Hawaii tuition and fees special fund; and
- (16) Division of community hospitals' special funds,

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year."

SECTION 4. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;
- (2) Special summer school fund under section [298-3.5;]       -1410;
- (3) School cafeteria special funds of the community colleges[,] and the department of education;
- (4) Special funds of the student housing, summer session, division of continuing education and community service, campus center, and bookstores of the University of Hawaii;
- (5) State educational facilities improvement special fund;
- (6) Special funds established by section 206E-6;
- (7) Aloha Tower fund created by section 206J-17;
- (8) Spouse and child abuse special account under section 346-7.5;
- (9) Spouse and child abuse special account under section 601-3.6;
- (10) Funds of the employees' retirement system created by section 88-109;
- (11) Unemployment compensation fund established under section 383-121;
- (12) Hawaii hurricane relief fund established under chapter 431P; and<sup>1</sup>
- (13) Convention center capital and operations special fund established under section 206X-10.5;
- (14) The University of Hawaii tuition and fees special fund; and
- (15) Division of community hospitals' special funds,

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned."

SECTION 5. Section 89-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

- (1) Nonsupervisory employees in blue-collar positions;
- (2) Supervisory employees in blue-collar positions;
- (3) Nonsupervisory employees in white-collar positions;
- (4) Supervisory employees in white-collar positions;
- (5) Teachers and other personnel of the department of education under the same salary schedule, including part-time employees working less than twenty hours a week who are equal to one-half of a full-time equivalent;
- (6) Educational officers and other personnel of the department of education under the same salary schedule;
- (7) Faculty of the University of Hawaii and the community college system;
- (8) Personnel of the University of Hawaii and the community college system, other than faculty;
- (9) Registered professional nurses;
- (10) Institutional, health, and correctional workers;
- (11) Firefighters;
- (12) Police officers; and
- (13) Professional and scientific employees, other than registered professional nurses.

Because of the nature of work involved and the essentiality of certain occupations [which] that require specialized training, units (9) through (13) are designated as optional appropriate bargaining units. Employees in any of these optional units may [either] vote either for separate units or for inclusion in their respective units (1) through (4). If a majority of the employees in any optional unit desire to constitute a separate appropriate bargaining unit, supervisory employees may be included in the unit by mutual agreement among supervisory and nonsupervisory employees within the unit; if supervisory employees are excluded, the appropriate bargaining unit for [such] these supervisory employees shall be (2) or (4), as the case may be.

The compensation plans for blue-collar positions pursuant to section 77-5 and for white-collar positions pursuant to section 77-13, the salary schedules for teachers pursuant to section [297-33] -724 and for educational officers pursuant to section [297-33.1] -725, and the appointment and classification of faculty pursuant to sections 304-11 and 304-13, existing on July 1, 1970, shall be the bases for differentiating blue-collar from white-collar employees, professional from institutional, health and correctional workers, supervisory from nonsupervisory employees, teachers from educational officers, and faculty from nonfaculty. In differentiating supervisory from nonsupervisory employees, class titles alone shall not be the basis for determination, but, in addition, the nature of the work, including whether or not a major portion of the working time of a supervisory employee is spent as part of a crew or team with nonsupervisory employees, shall also be considered."

SECTION 6. Section 89-10.6, Hawaii Revised Statutes, is amended to read as follows:

**"§89-10.6 School/community-based management waiver.** A school or a learning support center participating in the school/community-based management program [shall have the authority to] may initiate a waiver from policies, rules, or procedures, including collective bargaining agreements, as provided for in section [296C-4.] -1228."

SECTION 7. Section 89-23, Hawaii Revised Statutes, is amended to read as follows:

“[[§89-23]] Classroom cleaning; exception. No collective bargaining agreement or executive policy put forth after July 1, 1993, shall contain provisions [which] that may preclude the implementation of the classroom cleaning [program] project established in section [[296C-8],] -1608, unless a contract waiver process exists between the parties.”

SECTION 8. Section 92F-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any [provision] other law to the contrary notwithstanding, each agency shall make available for public inspection and duplication during regular business hours:

- (1) Rules of procedure, substantive rules of general applicability, statements of general policy, and interpretations of general applicability adopted by the agency;
- (2) Final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of cases;
- (3) Government purchasing information, including all bid results, except to the extent prohibited by section 92F-13;
- (4) Pardons and commutations, as well as directory information concerning an individual's presence at any correctional facility;
- (5) Land ownership, transfer, and lien records, including real property tax information and leases of state land;
- (6) Results of environmental tests;
- (7) Minutes of all agency meetings required by law to be public;
- (8) Name, address, and occupation of any person borrowing funds from a state or county loan program, and the amount, purpose, and current status of the loan;
- (9) Certified payroll records on public works contracts;
- (10) Regarding contract hires and consultants employed by agencies: the contract itself, the amount of compensation, the duration of the contract, and the objectives of the contract;
- (11) Building permit information within the control of the agency;
- (12) Water service consumption data maintained by the boards of water supply;
- (13) Rosters of persons holding licenses or permits granted by an agency that may include name, business address, type of license held, and status of the license;
- (14) The name, compensation (but only the salary range for employees covered by or included in chapters 76[,] and 77, [297,] and sections -702 to -743, and -801, or bargaining unit (8)), job title, business address, business telephone number, job description, education and training background, previous work experience, dates of first and last employment, position number, type of appointment, service computation date, occupational group or class code, bargaining unit code, employing agency name and code, department, division, branch, office, section, unit, and island of employment, of present or former officers or employees of the agency; provided that this [provision] paragraph shall not require the creation of a roster of employees; and provided further that this [provision] paragraph shall not apply to information regarding present or former employees involved in an undercover capacity in a law enforcement agency;
- (15) Information collected and maintained for the purpose of making information available to the general public; and

- (16) Information contained in or compiled from a transcript, minutes, report, or summary of a proceeding open to the public.”

SECTION 9. Section 102-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The bidding requirements of subsection (a) shall not apply to concessions or space on public property set aside for the following purposes:

- (1) For operation of ground transportation services at airports;
- (2) For lei vendors;
- (3) For airline and aircraft operations;
- (4) For automatic teller machines and vending machines, except vending machines located at public schools operated by blind or visually handicapped persons in accordance with section [298-21.5;]       -512;
- (5) For operation of concessions set aside without any charge;
- (6) For operation of concessions by handicapped [persons,] or blind persons; except concessions operated in the public schools by blind or visually handicapped persons in accordance with section [298-21.5;]       -512;
- (7) For operation of concessions on permits revocable on notice of thirty days or less; provided that no such permits shall be issued unless the premises covered therein [shall] are no longer [be] being used for the existing purposes, and that the permit is issued as a temporary use of the premises until the governmental agency proceeds to apply the premises for the new use thereof; and provided further that no permits shall be issued for more than one year;
- (8) For operation of concessions or concession spaces for a beach service association dedicated to the preservation of the Hawaii beachboy tradition, incorporated as a nonprofit corporation in accordance with state law, and whose members are appropriately licensed or certified as required by law; and
- (9) For operation of concessions at county zoos or botanic parks, by support groups that are incorporated as nonprofit corporations in accordance with state law, for purposes of supporting county aims and goals of the zoo and botanic parks.”

SECTION 10. Section 235-55.6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Special rules. For purposes of this section:

- (1) Maintaining household. An individual shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for [such] the period is furnished by [such] the individual (or, if [such] the individual is married during [such] the period, is furnished by [such] the individual and the individual’s spouse).
- (2) Married couples must file joint return. If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and the taxpayer’s spouse file a joint return for the taxable year.
- (3) Marital status. An individual legally separated from the individual’s spouse under a decree of divorce or of separate maintenance shall not be considered as married.
- (4) Certain married individuals living apart. If:
  - (A) An individual who is married and who files a separate return:

- (i) Maintains as the individual's home a household [which] that constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, and
  - (ii) Furnishes over half of the cost of maintaining [such] the household during the taxable year,
- and
- (B) During the last six months of [such] the taxable year [such] the individual's spouse is not a member of [such] the household, [such] the individual shall not be considered as married.
- (5) Special dependency test in case of divorced parents, etc. If:
  - (A) Paragraph (2) or (4) of section 152(e) of the Internal Revenue Code of [1954,] 1986, as amended, applies to any child with respect to any calendar year[;], and
  - (B) [Such] The child is under age thirteen or is physically or mentally incompetent of caring for the child's self[;],

in the case of any taxable year beginning in [such] the calendar year, [such] the child shall be treated as a qualifying individual described in subsection (b)(1)(A) or (B) (whichever is appropriate) with respect to the custodial parent (within the meaning of section 152(e)(1) of the Internal Revenue Code of [1954,] 1986, as amended), and shall not be treated as a qualifying individual with respect to the noncustodial parent.
- (6) Payments to related individuals. No credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual:
  - (A) With respect to whom, for the taxable year, a deduction under section 151(c) of the Internal Revenue Code of [1954,] 1986, as amended (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or the taxpayer's spouse, or
  - (B) Who is a child of the taxpayer (within the meaning of section 151(c)(3) of the Internal Revenue Code of [1954,] 1986, as amended) who has not attained the age of nineteen at the close of the taxable year.

For purposes of this paragraph, the term "taxable year" means the taxable year of the taxpayer in which the service is performed.
- (7) Student. The term "student" means an individual who, during each of five calendar months during the taxable year, is a full-time student at an educational organization.
- (8) Educational organization. The term "educational organization" means a school operated by the department of education [or licensed under chapter 298,] under chapter \_\_\_\_\_, an educational organization described in section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1986, as amended, or a university, college, or community college.
- (9) Identifying information required with respect to service provider. No credit shall be allowed under subsection (a) for any amount paid to any person unless:
  - (A) The name, address, taxpayer identification number, and general excise tax license number of [such] the person are included on the return claiming the credit,
  - (B) If the person is located outside the State, the name, address, and taxpayer identification number, if any, of the person and a statement indicating that the service provider is located outside the State and that the general excise tax license and, if applicable, the taxpayer identification numbers are not required, or



- (C) If [such] the person is an organization described in section 501(c)(3) of the Internal Revenue Code and exempt from tax under section 501(a) of the Internal Revenue Code, the name and address of [such] the person are included on the return claiming the credit.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required."

SECTION 11. Section 246-32, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) This subsection applies to property owned in fee simple, leased, or rented for a period of one year or more, by the person using the property for the exempt purposes, hereinafter referred to as the person claiming the exemption. If the property for which exemption is claimed is leased or rented, the lease or rental agreement shall be in force and recorded in the bureau of conveyances.

Exemption is allowed by this subsection to the following property:

- (1) Property used for school purposes including:

(A) Kindergartens, grade schools, junior high schools, and high schools, which carry on a program of instruction meeting the requirements of the compulsory school attendance law, section [298-9,] -1234, or which are for preschool children who have attained or will attain the age of five years [on or before December 31] before January 1 of the school year[.]; provided that any claim for exemption based on any of the foregoing uses shall be accompanied by a certificate issued by or under the authority of the department of education stating that the foregoing requirements are met;

(B) Junior colleges or colleges carrying on a general program of instruction of college level. The property exempt from taxation under this paragraph is limited to buildings used for educational purposes (including dormitories), housing owned by the school or college and used as residence for personnel employed at the school or college, campus and athletic grounds, and realty used for vocational purposes incident to the school or college.

- (2) Property used for hospital and nursing home purposes, including housing for personnel employed at the hospital[; in]. In order to qualify under this paragraph the person claiming the exemption shall present with the claim a certificate issued by or under the authority of the department of health that the property for which the exemption is claimed consists [in,] of, or is a part of, hospital or nursing home facilities [which] that are properly constituted under the law and maintained to serve, and [which] that do serve the public.

- (3) Property used for church purposes, including incidental activities, parsonages, and church grounds, the property exempt from taxation being limited to realty exclusive of burying grounds (exemption for which may be claimed under paragraph (4)).

- (4) Property used as cemeteries (excluding[, however,] property used for cremation purposes) maintained by a religious society, or by a corporation, association, or trust organized for [such] this purpose.

- (5) Property dedicated to public use by the owner, which dedication has been accepted by the State or any county, reduced to writing, and

recorded in the bureau of conveyances; and property which has been set aside for public use and actually used therefor for a period not less than five years after enactment of this section.

- (6) Property owned by any nonprofit corporation, admission to membership of which is restricted by the corporate charter to members of a labor union; property owned by any government employees' association or organization, one of the primary purposes of which is to improve employment conditions of its members; property owned by any trust, the beneficiaries of which are restricted to members of a labor union; and property owned by any association or league of federal credit unions chartered by the United States, the sole purpose of which is to promote the development of federal credit unions in the State. Notwithstanding any provision in this section to the contrary, the exemption shall apply to property or any portion thereof [which] that is leased, rented, or otherwise let to another, if [such] the leasing, renting, or letting is to a nonprofit association, organization, or corporation."

SECTION 12. Section 286-181, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) As used in this section "school vehicle" means any publicly or privately owned motor vehicle used to transport pupils to and from a school, as defined in section [298-41 or] -1001, school functions, or school-related events, except:

- (1) A motor vehicle used for the transportation of pupils attending schools above the twelfth grade or pupils over eighteen years of age;
- (2) A [privately owned] privately-owned passenger vehicle when the transportation is provided without compensation of any kind;
- (3) A motor vehicle used for the transportation of pupils together with other passengers as a part of the regularly scheduled operation of a mass transit system; or
- (4) A [privately owned] privately-owned motor vehicle when the transportation is provided by a community association or a nonprofit corporation, duly incorporated with the department of commerce and consumer affairs, which operates for the purpose of promoting recreation, health, safety, ridesharing, or social group functions."

SECTION 13. Section 312-8, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The literacy and lifelong learning program shall not affect existing department of education programs relating to adult education as provided under [part I of chapter 301.] sections -533 to -536."

SECTION 14. Section 321-115, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) It shall be unlawful for any person to vend prophylactics in mechanical coin-operated machines on the premises of any school in this State. The term "school" as used [herein] in this section shall have the same meaning as defined by section [297-1.] -601."

SECTION 15. Section 431:10C-115, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The commissioner shall allocate the fees deposited for each fiscal year in the following manner:

- (1) Fifty per cent to the commissioner to be expended for the operation of the drivers education program provided in section 286-128(m); and
- (2) Fifty per cent to the director of commerce and consumer affairs for:
  - (A) The drivers education program administered by the department of education for high school students; and
  - (B) The traffic safety education program established and administered by the department of education pursuant to section [299-5.] -517.”

SECTION 16. Section 461J-1, Hawaii Revised Statutes, is amended by amending the definition of “educational institution” to read as follows:

““Educational institution” means public [and private] schools as defined under chapter [297,] \_\_\_\_, privately operated schools of lower education, and colleges, the University of Hawaii, and other universities.”

SECTION 17. Section 571-14, Hawaii Revised Statutes, is amended to read as follows:

“**§571-14 Jurisdiction; adults.** The court shall have exclusive original jurisdiction:

- (1) To try any offense committed against a child by the child’s parent or guardian or by any other person having the child’s legal or physical custody, and any violation of section 707-726, 707-727, 709-902, 709-903, 709-903.5, 709-904, 709-905, 709-906, or [298-12,] -1237, whether or not included in other provisions of this paragraph or paragraph (2).
- (2) To try any adult charged with:
  - (A) Deserting, abandoning, or failing to provide support for any person in violation of law;
  - (B) An offense, other than a felony, against the person of the defendant’s husband or wife;
  - (C) Any violation of an order issued pursuant to chapter 586; or
  - (D) Any violation of an order issued by a family court judge.

In any case within paragraph (1) or (2), the court, in its discretion, may waive its jurisdiction over the offense charged.

- (3) In all proceedings under chapter 580, and in all proceedings under chapter 584.
- (4) In proceedings under chapter 575, the Uniform Desertion and Non-support Act, and under chapter 576, the Uniform Reciprocal Enforcement of Support Act.
- (5) For commitment of an adult alleged to be mentally defective or mentally ill.
- (6) In all proceedings for support between parent and child or between husband and wife.
- (7) In all proceedings for waiver of jurisdiction over an adult who was a child at the time of an alleged criminal act as provided in section 571-22.
- (8) In all proceedings under chapter 586, Domestic Abuse Protective Orders.
- (9) In all proceedings to appoint a guardian of the person of an adult.
- (10) For the protection of dependent adults under chapter 346, part X.

In any case within paragraph (3), (4), or (6), the attorney general, through the child support enforcement agency, may exercise concurrent jurisdiction as provided in chapter 576E.”

SECTION 18. Section 708-813, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- “(1) A person commits the offense of criminal trespass in the first degree if:
- (a) That person knowingly enters or remains unlawfully:
    - (i) In a dwelling; or
    - (ii) In or upon the premises of a hotel or apartment building; [or]
  - (b) That person:
    - (i) Knowingly enters or remains unlawfully in or upon premises [which] that are fenced or enclosed in a manner designed to exclude intruders; and
    - (ii) Is in possession of a firearm, as defined in section 134-1, at the time of [such] the intrusion;
  - or
  - (c) That person enters or remains unlawfully in or upon the premises of any public school[,], as defined in section [297-1,] -601, or any private school, after reasonable warning or request to leave by school authorities or a police officer.”

SECTION 19. Chapters 296, 296C, 296D, 297, 297D, 298, 299, 300, and 301, Hawaii Revised Statutes, are repealed.

SECTION 20. Act 364, Session Laws of Hawaii 1993, section 31, is amended by Act 272, Session Laws of Hawaii 1994, is amended to read as follows:

“SECTION 31. This Act shall take effect upon its approval; provided that sections 27 and 28 shall take effect on July 1, 1993; and provided further that the provisions of section 11 concerning pay adjustments [and the provisions of section 13 concerning reallocation of vacant positions] shall be repealed on June 30, 1997.”

SECTION 21. This Act shall be amended to conform to all other acts passed by the legislature during this regular session of 1996, whether enacted before or after the effective date of this Act, unless the other acts specifically provide otherwise; provided that the numbering, structure, and organization of the new chapter in section 2 of this Act shall control.

SECTION 22. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 23. This Act shall take effect upon its approval.

(Approved June 7, 1996.)

**Note**

1. “And” should be underscored.

## ACT 90

H.B. NO. 3862

A Bill for an Act Relating to School Discipline.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the rapid increase in the number of disruptive students in our public schools is having a detrimental effect on those students seeking a quality education. The legislature believes that to ensure that schools remain a safe and conducive place of learning, the problems of student discipline that arise from substance abuse and violence on school campuses need to be addressed.

The purpose of this Act is to allow principals, on a case-by-case basis, to exclude students found to be in possession of dangerous weapons, switchblade knives, intoxicating liquor, or illicit drugs while attending school.

SECTION 2. The Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§ - **Zero tolerance policy.** (a) Any child who is found to be in possession of a dangerous weapon, switchblade knife, intoxicating liquor, or illicit drugs while attending school, may be excluded from attending school for up to ninety-two school days, as determined by the principal and approved by the superintendent. The due process procedures of the department of education adopted pursuant to chapter 91, shall apply to any child who is alleged to be in possession of a dangerous weapon, switchblade knife, intoxicating liquor, or illicit drugs while attending school. If a child is excluded from attending school, the superintendent shall ensure that substitute educational activities or other appropriate assistance shall be provided, and that the child is referred for appropriate intervention and treatment services, as determined by the principal in consultation with the school counselor.

(b) For purposes of this section:

- (1) “Dangerous weapon” means a dirk, dagger, butterfly knife, blackjack, slug shot, billy, metal knuckles, or other instrument whose sole design and purpose is to inflict bodily injury or death; provided that firearms are excluded from this definition;
- (2) “Illicit drugs” means substances, the possession, distribution, ingestion, manufacture, sale or delivery of which are prohibited under chapter 329 and chapter 712, part IV, of the Hawaii Revised Statutes; and
- (3) “Switchblade knife” is as defined in section 134-52, Hawaii Revised Statutes.”

SECTION 3. Section 298-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any child who, while attending school, is found to be in possession of a firearm, [while attending school] shall be excluded from attending school for not less than one year. The due process procedures of [Chapter] chapter 19 of the Department of Education, Hawaii Administrative Rules, shall apply to any child who, while attending school, is alleged to be in possession of a firearm. [while attending school.] The superintendent, on a case-by-case basis, may modify the exclusion of a child found to be in possession of a firearm while attending school. [on a case-by-case basis. In the event] If a child is excluded from attending school, the superintendent shall ensure that substitute educational activities or other appropriate assistance

## ACT 91

shall be provided. The superintendent shall submit to the United States Department of Education, the state board of education, and the legislature an annual report indicating the number of students excluded, the types of firearms found in their possession, and the schools from which they were excluded."

SECTION 4. If S.B. No. 2446<sup>1</sup> is passed by the legislature in any form during this regular session of 1996, whether before or after the effective date of this Act, then section -1236, Hawaii Revised Statutes, as contained in Section 2 of S.B. No. 2446<sup>1</sup> shall be amended to reflect the amendment of section 298-11, Hawaii Revised Statutes, in this Act.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 6. This Act shall take effect upon its approval.

(Approved June 7, 1996.)

### Notes

1. Act 89.
2. Edited pursuant to HRS §23G-16.5.

## ACT 91

H.B. NO. 2514

A Bill for an Act Relating to the Transition to Work System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new part to be appropriately designated and to read as follows:

### **"PART . TECHNICAL AND VOCATIONAL TRAINING; SCHOOL-TO-WORK TRANSITION PROGRAM**

§ - **School-to-work transition program; established.** There is established within the department of education a school-to-work transition program.

§ - **Powers and duties.** The school-to-work transition program shall provide for the continued delivery of integrated services directed at assisting high school students toward successfully completing their transition from school to work, or to further their training and education."

SECTION 2. Chapter 373E, Hawaii Revised Statutes, is repealed.

SECTION 3. All rights, powers, functions, and duties of the department of labor and industrial relations relating to the school-to-work transition program shall be transferred to the department of education.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act.

SECTION 4. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of labor and industrial

relations relating to the functions transferred to the department of education shall be transferred with the functions to which they relate.

SECTION 5. This Act shall take effect on July 1, 1996.

(Approved June 7, 1996.)

## ACT 92

S.B. NO. 2723

A Bill for an Act Relating to Limited Liability Companies.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

### “CHAPTER UNIFORM LIMITED LIABILITY COMPANY ACT

#### PART I. GENERAL PROVISIONS

§ -101 **Definitions.** As used in this chapter:

“Articles of organization” means initial, amended, and restated articles of organization and articles of merger. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed in the office of the director or comparable office of the company’s jurisdiction of organization.

“Business” includes every trade, occupation, profession, and other lawful purpose, whether or not carried on for profit.

“Debtor in bankruptcy” means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application or a comparable order under federal, state, or foreign law governing insolvency.

“Department” means the department of commerce and consumer affairs.

“Director” means the director of commerce and consumer affairs.

“Distribution” means a transfer of money, property, or other benefit from a limited liability company to a member in the member’s capacity as a member or to a transferee of the member’s distributional interest.

“Distributional interest” means all of a member’s interest in distributions by the limited liability company.

“Entity” means a person other than an individual.

“Foreign limited liability company” means an unincorporated entity organized under laws other than the laws of this State which afford limited liability to its owners comparable to the liability under section -303 and is not required to obtain a certificate of authority to transact business under any law of this State other than this chapter.

“Limited liability company” means a limited liability company organized under this chapter.

“Manager” means a person, whether or not a member of a manager-managed limited liability company, who is vested with authority under section -301(b).

“Manager-managed limited liability company” means a limited liability company which is so designated in its articles of organization.

“Member-managed limited liability company” means a limited liability company other than a manager-managed company.

“Operating agreement” means the agreement under section -103 concerning the relations among the members, managers, and limited liability company. The term includes amendments to the agreement.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

“Principal office” means the office, whether or not in this State, where the principal executive office of a domestic or foreign limited liability company is located.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Signed” includes any symbol executed or adopted by a person with the present intention to authenticate a record.

“Transfer” includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, and gift.

**§ -102 Knowledge and notice.** (a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:

- (1) Knows the fact;
- (2) Has received a notification of the fact; or
- (3) Has reason to know the fact exists from all of the facts known to the person at the time in question.

(c) A person notifies or gives a notification of a fact to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

(d) A person receives a notification when the notification:

- (1) Comes to the person’s attention; or
- (2) Is duly delivered at the person’s place of business or at any other place held out by the person as a place for receiving communications.

(e) An entity knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the entity knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual’s attention had the entity exercised reasonable diligence. An entity exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the entity and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the entity to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

**§ -103 Effect of operating agreement; nonwaivable provisions.** (a) Except as provided in subsection (b), all the members of a limited liability company may enter into an operating agreement, which must be in writing, to regulate the affairs of the company and the conduct of its business, and to govern relations among the members, managers, and company. To the extent the operating agreement does not otherwise provide, this chapter governs relations among the members, managers, and company.

(b) The operating agreement may not:



- (1) Unreasonably restrict a right to information or access to records under section -408;
- (2) Eliminate the duty of loyalty under section -409(b) or -603(b)(3), but the agreement may:
  - (A) Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and
  - (B) Specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
- (3) Unreasonably reduce the duty of care under section -409(c) or -603(b)(3);
- (4) Eliminate the obligation of good faith and fair dealing under section -409(d), but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- (5) Vary the right to expel a member in an event specified in section -601(5);
- (6) Vary the requirement to wind up the limited liability company's business in a case specified in section -801(4) or -801(5); or
- (7) Restrict rights of third parties under this chapter, other than managers, members, or their transferees.

**§ -104 Supplemental principles of law.** (a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in section 478-2.

**§ -105 Name.** (a) The name of a limited liability company must contain "limited liability company" or the abbreviation "L.L.C." or "LLC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co." The letters in the name of a limited liability company must be letters of the English alphabet.

(b) Except as authorized by subsections (c) and (d), the name of a limited liability company must not be the same as, or substantially identical to,:

- (1) The name of any corporation, partnership, or limited liability company existing under the laws of this State;
- (2) The name of any foreign corporation, foreign partnership, or foreign limited liability company authorized to transact business in this State;
- (3) A name the exclusive right to which is reserved under the laws of this State;
- (4) A fictitious name approved under section -1005 for a foreign limited liability company authorized to transact business in this State because its real name is unavailable; or
- (5) Any trade name, service mark, or trademark registered in this State.

(c) A limited liability company may apply to the director for authorization to use a name that, upon the records of the department, is the same as, or is substantially identical to, one or more of the names described in subsection (b). The director may authorize use of a substantially identical name applied for if:

- (1) The present user, registrant, or owner of a reserved or registered name consents in writing to the use of the name, and one or more words are added to make the name distinguishable upon the records of the director from the name applied for; or

- (2) The applicant delivers to the director a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State.

(d) A limited liability company may use the name, including a fictitious name, of another domestic or foreign entity which is used in this State if the other entity is organized or authorized to transact business in this State and the company proposing to use the name has:

- (1) Merged with the other entity; or
- (2) Been formed by reorganization with the other entity.

**§ -106 Reserved name.** (a) A person may reserve the exclusive use of the name of a limited liability company or a foreign limited liability company, including a fictitious name for a foreign limited liability company whose company name is not available, by delivering an application to the director for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the director finds that the name applied for is available, it shall be reserved for the applicant's exclusive use for a nonrenewable one-hundred-twenty-day period from the date of filing.

(b) The owner of a name so reserved may transfer the reservation to another person by delivering to the director a signed notice of the transfer which states the name and address of the transferee.

**§ -107 Designated office and agent for service of process.** (a) A limited liability company and a foreign limited liability company authorized to do business in this State shall designate and continuously maintain in this State:

- (1) An office, which need not be a place of its business in this State; and
- (2) An agent and street address of the agent for service of process on the company.

(b) An agent shall be an individual resident of this State, a domestic corporation, or another limited liability company.

**§ -108 Change of designated office or agent for service of process.** A limited liability company or a foreign limited liability company may change its designated office or agent for service of process by delivering to the director for filing a statement of change which sets forth:

- (1) The name of the company;
- (2) The street address of its current designated office, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service;
- (3) If the current designated office is to be changed, the street address of the new designated office, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service;
- (4) The name and street address of its current agent for service of process; and
- (5) If the current agent for service of process or street address of that agent is to be changed, the new street address or the name and street address of the new agent for service of process.

**§ -109 Resignation of agent for service of process.** (a) An agent for service of process of a limited liability company or a foreign limited liability company may resign by delivering to the director for filing a record of the statement of resignation.

(b) After filing a statement of resignation, the director shall mail a copy to the designated office and another copy to the limited liability company or foreign limited liability company at its principal office.

(c) An agency is terminated on the thirty-first day after the statement is filed in the office of the director.

**§ -110 Service of process.** (a) An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served upon the company.

(b) If a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the agent's address, service of process may be made upon the limited liability company or foreign limited liability company by registered or certified mail, return receipt requested, addressed to the limited liability company or foreign limited liability company at its last designated office or principal office as disclosed by the records in the office of the director.

(c) Service by registered or certified mail is effected under subsection (b) at the earliest of:

- (1) The date the company receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the company; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

(d) This section shall not affect the right to serve process, notice, or demand in any other manner provided by law.

**§ -111 Nature of business and powers.** (a) A limited liability company may be organized under this chapter for any lawful purpose; provided that the following purposes are prohibited:

- (1) Activities of a financial institution under chapter 412;
- (2) Activities under chapter 431; or
- (3) Activities under chapter 442, 448, 453, 455, 459, 460, 461, 463E, 465, 466, 471, or 605, or section 554-2.

A limited liability company shall be subject to any law of this State governing or regulating business. If the purpose for which a limited liability company is organized or its form makes it subject to a special provision of law, the limited liability company shall also comply with that provision.

(b) Unless its articles of organization provide otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry on its business or affairs, including power to:

- (1) Sue and be sued, and defend in its company name;
- (2) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in property, wherever located;
- (3) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
- (4) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
- (5) Make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, which may be convertible into or

- include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises, or income;
- (6) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
  - (7) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
  - (8) Conduct its business, locate offices, and exercise the powers granted by this chapter within or without this State;
  - (9) Elect managers and appoint officers, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit;
  - (10) Pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former members, managers, officers, employees, and agents;
  - (11) Make donations for the public welfare or for charitable, scientific, or educational purposes; and
  - (12) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the limited liability company.

## PART II. ORGANIZATION

§ -201 **Limited liability company as legal entity.** A limited liability company is a legal entity distinct from its members.

§ -202 **Organization.** (a) One or more persons may organize a limited liability company, consisting of two or more members, by delivering articles of organization to the office of the director for filing.

(b) The existence of a limited liability company begins when the articles of organization are filed.

(c) The filing of the articles of organization by the director is conclusive proof that the organizers satisfied all conditions precedent to the creation of the organization.

§ -203 **Articles of organization.** (a) Articles of organization of a limited liability company must set forth:

- (1) The name of the company;
- (2) The street address of the initial designated office, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service;
- (3) The name and street address of the initial agent for service of process;
- (4) The name and address of each organizer;
- (5) Whether the duration of the company is for a specified term and, if so, the period specified;
- (6) Whether the company is to be manager-managed, and:
  - (A) If so, the name and residence street address of each initial manager, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service, and the number of initial members; or
  - (B) If not, the name and residence street address of each initial member, or if no street address is available, the rural post office

number or post office box designated or made available by the United States Postal Service; and

- (7) Whether the members of the company are to be liable for its debts and obligations under section -303(c).
- (b) Articles of organization of a limited liability company may set forth:
  - (1) Provisions permitted to be set forth in an operating agreement; or
  - (2) Other matters not inconsistent with law.
- (c) Articles of organization of a limited liability company may not vary the nonwaivable provisions of section -103(b). As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:
  - (1) The operating agreement controls as to managers, members, and members' transferees; and
  - (2) The articles of organization control as to persons other than managers, members, and their transferees who rely on the articles to their detriment.
- (d) The duration of a limited liability company is at-will unless a term for its duration is specified in its articles of organization.

**§ -204 Amendment or restatement of articles of organization.** (a) Articles of organization of a limited liability company may be amended at any time by delivering articles of amendment to the director for filing. The articles of amendment shall contain the following:

- (1) The name of the limited liability company; and
  - (2) The amendment to the articles of organization, referencing specifically the provisions being amended.
- (b) A limited liability company at any time may restate its articles of organization as theretofore amended. Restated articles of organization shall be signed and filed in the same manner as articles of amendment. Restated articles of organization shall set forth all of the operative provisions of the articles of organization as theretofore amended, together with a statement that, except for the amendments specifically referenced therein, the restated articles of organization correctly set forth without change the corresponding provisions of the articles of organization as theretofore amended, and that the restated articles of organization supersede the original articles of organization and all amendments thereto.

**§ -205 Signing of records.** (a) Except as otherwise provided in this chapter, a record to be filed by or on behalf of a limited liability company in the office of the director shall be certified and signed by a:

- (1) Manager of a manager-managed company;
  - (2) Member of a member-managed company;
  - (3) Person organizing the company, if the company has not been formed; or
  - (4) Fiduciary, if the company is in the hands of a receiver, trustee, or other court-appointed fiduciary.
- (b) A record signed under subsection (a) shall state the name and capacity of the signer adjacent to the signature.
- (c) The signer of a record to be filed under subsection (a) may do so as an attorney-in-fact by stating beneath or opposite the signature the name of the person for whom the signer is the attorney-in-fact. The power of attorney need not be filed with the record.

**§ -206 Filing in office of director.** (a) Articles of organization or any other record authorized to be filed under this chapter shall be in a medium permitted by the director and shall be delivered to the office of the director. Unless the director

determines that a record fails to comply as to form with the filing requirements of this chapter, and if all filing fees have been paid, the director shall file the record and stamp the word "Filed" and the date of delivery thereof.

(b) Upon request and payment of a fee, the director shall send to the requester a certified copy of the requested record.

(c) Articles of organization or amendment accepted for filing by the director are effective as of the date and time they are filed with the director.

(d) Articles of termination and merger may become effective at a later time and date, as specified in the record, but not more than thirty days after the date of filing with the director.

(e) If a delayed effective date for a record is specified but no time is specified, the record is effective at 12:01 a.m. on that date. A specified delayed effective date that is later than the thirtieth day after the record is filed makes the record effective as of the thirtieth day.

(f) A record filed with the director may contain information in addition to that required by this chapter.

(g) If the director has prescribed a mandatory form for a record to be filed, the record must be in or on the prescribed form.

(h) The duty of the director to file records under this chapter is ministerial. The filing or refusal to file a document does not:

- (1) Affect or create a presumption as to the validity or invalidity of the record in whole or in part; or
- (2) Relate to or create a presumption as to the correctness or incorrectness of information contained in the record.

**§ -207 Correcting filed record.** (a) A limited liability company or foreign limited liability company may correct a record filed by the director if the record contains a false or erroneous statement or was defectively certified or signed.

(b) A record is corrected:

(1) By preparing articles of correction that:

- (A) Describe the record, including its filing date, or attach a copy of it to the articles of correction;
- (B) Specify the incorrect statement and the reason it is incorrect or the manner in which the certification or signing was defective; and
- (C) Corrects the incorrect statement or defective certification or signing; and

(2) By delivering the corrected record to the director for filing.

(c) Articles of correction are effective retroactively to the effective date of the record they correct. However, a person who has relied on the uncorrected record and was adversely affected by the correction is not bound by the correction until the articles of correction are filed.

**§ -208 Liability for false statement in filed record.** If a record authorized or required to be filed under this chapter contains a false statement, any person who suffers loss by reliance on the statement may recover damages for the loss from the person who signed the record or caused another to sign it on the person's behalf and knew the statement to be false at the time the record was signed.

**§ -209 Filing by judicial act.** If a person required by section -205, or otherwise by this chapter, to sign a record fails or refuses to do so, any other person who is adversely affected by such failure or refusal may petition the circuit court to direct the failing or refusing person to sign the record. If the court finds that it is proper for the record to be signed and that a person so designated has failed or

refused to sign the record, it shall authorize another person to sign, on behalf of the person refusing or failing to sign, and to file an appropriate record.

**§ -210 Filing of annual report.** (a) Each limited liability company and each foreign limited liability company authorized to transact business in this State shall deliver to the director for filing an annual report that sets forth:

- (1) The name of the company and the state or country under whose law it is organized;
- (2) The street address of its designated office and the name and street address of its agent for service of process in this State, provided that if no street address is available the rural post office number or post office box designated or made available by the United States Postal Service;
- (3) The street address of its principal office, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and
- (4) Whether the company is manager-managed, and:
  - (A) If so, the name and residence street address of each manager, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service, and the number of members; or
  - (B) If not, the name and residence street address of each member, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service.

(b) The information in an annual report shall be current as of December 31 of the year preceding the year of filing.

(c) The first annual report shall be delivered to the director by June 30 of the year following the calendar year in which a limited liability company was organized or a foreign limited liability company was authorized to transact business. Subsequent annual reports shall be delivered to the director by June 30 of the following calendar year.

(d) If an annual report does not contain the information required in subsection (a), the director shall return the report for correction. If the report is corrected to contain the information required in subsection (a) and delivered to the director within thirty days after the date on which it was mailed to the limited liability company by the director, the report shall be considered to be timely filed.

### **PART III. RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH THE LIMITED LIABILITY COMPANY**

**§ -301 Agency of members and managers.** (a) Subject to the provisions of subsections (b) and (c):

- (1) Each member is an agent of the limited liability company for the purpose of its business;
- (2) An act of a member, including the signing of an instrument in the company name, for apparently carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company, unless the member had no authority to act for the company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority; and
- (3) An act of a member which is not apparently for carrying on in the ordinary course of the company's business or business of the kind

carried on by the company binds the company only if the act was authorized by the other members.

(b) Subject to subsection (c), in a manager-managed limited liability company:

- (1) A member is not an agent of the company for the purpose of its business solely by reason of being a member;
- (2) Each manager is an agent of the company for the purpose of its business;
- (3) An act of a manager, including the signing of an instrument in the company name, for apparently carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company, unless the manager had no authority to act for the company in the particular matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority; and
- (4) An act of a manager which is not apparently for carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company only if the act was authorized under section -404(b)(2).

(c) Unless the articles of organization limit their authority, any member of a member-managed limited liability company or any manager of a manager-managed company may sign and deliver any instrument transferring or affecting the company's interest in real property. Such an instrument shall be conclusively in favor of a person who gives value without knowledge of the lack of the authority of the person signing and delivering the instrument.

**§ -302 Limited liability company liable for member's or manager's actionable conduct.** A limited liability company shall be liable for loss or injury caused to any person, or for a penalty incurred, as a result of a wrongful act or omission or other actionable conduct of a member or manager acting in the ordinary course of business of the company or with authority of the company.

**§ -303 Liability of members and managers.** (a) Except as otherwise provided in subsection (c), the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager shall not be personally liable for any debt, obligation, or liability of the company solely by reason of being or acting as a member or a manager.

(b) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business shall not be a ground for imposing personal liability on the members or managers for liabilities of the company.

(c) All or specified members of a limited liability company shall be liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:

- (1) A provision to that effect is contained in the articles of organization; and
- (2) A member so liable has consented in writing to the adoption of the provision or to be bound by the provision.



## PART IV. RELATIONS OF MEMBERS TO ONE ANOTHER AND TO THE LIMITED LIABILITY COMPANY

§ -401 **Form of contribution.** The contribution of a member of a limited liability company may consist of tangible or intangible property or other benefit to the company, including money, promissory notes, services performed, or other obligations to contribute cash or property, or contracts for services to be performed.

§ -402 **Member's liability for contributions.** (a) A member's obligation to contribute money, property, or other benefit to, or to perform services for, a limited liability company is not excused by the member's death, disability, or other inability to perform personally. If a member does not make the required contribution of property or services, the member or the member's executors, as the case may be, is obligated at the option of the company to contribute money equal to that portion of the value of the stated contribution which has not been made.

(b) A creditor of a limited liability company who extends credit or otherwise acts in reliance on an obligation described in subsection (a), and without notice of any compromise under section -404(c)(5), may enforce the original obligation.

§ -403 **Member's and manager's rights to payments and reimbursement.** (a) A limited liability company shall reimburse a member or manager for payments made and indemnify a member or manager for liabilities incurred by the member or manager in the ordinary course of the business of the company or for the preservation of its business or property.

(b) A limited liability company shall reimburse a member for any advance to the company which exceeds the amount of contribution the member agreed to make.

(c) A payment or advance made by a member which gives rise to an obligation of a limited liability company under subsection (a) or (b) constitutes a loan to the company upon which interest accrues from the date of the payment or advance.

(d) A member is not entitled to remuneration for services performed for a limited liability company, except for reasonable compensation for services rendered in winding up the business of the company.

§ -404 **Management of the limited liability company.** (a) In a member-managed limited liability company:

- (1) Each member has equal rights in the management and conduct of the company's business;
- (2) Except as specified in subsection (c) or in section -801(3)(A), any matter relating to the business of the company may be decided by a majority of the members; and
- (3) Each member who is not an individual must be qualified to transact business in this State.

(b) In a manager-managed limited liability company:

- (1) The manager or managers have the exclusive authority to manage and conduct the company's business;
- (2) Except as specified in subsection (c) or in section -801(3)(A), any matter relating to the business of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and
- (3) A manager shall:
  - (A) Be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members;

- (B) Be qualified to transact business in this State if the manager is an entity; and
  - (C) Remain in office until a successor has been elected and qualified, unless the manager resigns or is removed sooner.
- (c) The following matters require the consent of all the members of the limited liability company:
- (1) Amendments to the operating agreement under section -103;
  - (2) Authorization or ratification of acts or transactions under section -103(b)(2)(B) which would otherwise violate the duty of loyalty;
  - (3) Amendments to the articles of organization under section -204;
  - (4) Compromising an obligation to make a contribution under section -402(b);
  - (5) Compromising among members, of an obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter;
  - (6) Making interim distributions under section -405(a);
  - (7) Admission of a new member;
  - (8) Use of the company's property to redeem an interest subject to a charging order;
  - (9) Consent to dissolve the company under section -801(2);
  - (10) Waiving of the right to have the company's business wound up and the company terminated under section -802(b);
  - (11) Merging the company with another entity under section -904(c)(1); and
  - (12) Selling, leasing, exchanging, or otherwise disposing of all, or substantially all, of the company's property with or without goodwill.

(d) Action requiring the consent of members or managers under this chapter may be taken with or without a meeting. If a meeting is otherwise required and written action in lieu thereof is not prohibited, the written action must be evidenced by one or more consents reflected in a record describing the action taken and signed by all of the members or managers entitled to vote on the action.

(e) A member or manager may appoint a proxy to vote or otherwise act for the member or manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact. An appointment of a proxy is valid for eleven months unless a different time is specified in the appointment instrument. An appointment is revocable by the member or manager unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest, in which case the appointment is revoked when the interest is extinguished.

**§ -405 Sharing of and right to distributions.** (a) Any distributions made by a limited liability company, prior to dissolution and winding up, must be in equal shares.

(b) A member has no right to receive, and may not be required to accept, a distribution in kind.

(c) If a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

**§ -406 Limitations on distributions.** (a) A distribution may not be made if:

- (1) The limited liability company would not be able to pay its debts as they become due in the ordinary course of business; or

- (2) The company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under subsection (a) on financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

(c) Except as otherwise provided in subsection (e), the effect of a distribution under subsection (a) is measured:

- (1) In the case of distribution by purchase, redemption, or other acquisition of a distributional interest in a limited liability company, as of the date money or other property is transferred or debt incurred by the company; and
- (2) In all other cases, as of the date the:
  - (A) Distribution is authorized if the payment occurs within one-hundred-twenty-days after the date of authorization; or
  - (B) Payment is made if it occurs more than one-hundred-twenty-days after the date of authorization.

(d) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general unsecured creditors.

(e) Indebtedness of a limited liability company, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of determinations under subsection (a) if its terms provide that payment of principal and interest is made only if and to the extent that payment of a distribution to members could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

**§ -407 Liability for unlawful distributions.** (a) A member of a member-managed limited liability company or a member or manager of a manager-managed company who votes for or assents to a distribution made in violation of section -406, the articles of organization, a written operating agreement, or a signed record is personally liable to the company for the amount of the distribution which exceeds the amount that could have been distributed without violating section -406, the articles of organization, a written operating agreement, or a signed record if it is established that the member or manager did not perform the member's or manager's duties in compliance with section -409.

(b) A member of a manager-managed limited liability company who knew a distribution was made in violation of section -406 is personally liable to the limited liability company, but only to the extent that the distribution received by the member exceeded the amount that could properly have been paid under section -406.

(c) A member or manager against whom an action is brought under this section may plead in the action all:

- (1) Other members or managers who voted for or assented to the distribution in violation of subsection (a) and may compel contribution from them; and
- (2) Members who received a distribution in violation of subsection (b) and may compel contribution from the member in the amount received in violation of subsection (b).

(d) A proceeding under this section is barred unless it is commenced within two years after the distribution.

**§ -408 Member's right to information.** (a) A limited liability company shall provide members and their agents and attorneys access to any of its records at reasonable locations specified in the operating agreement. The company shall provide former members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were members. The right of access includes the opportunity to inspect and copy records during ordinary business hours. The company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(b) A limited liability company shall furnish to a member, and to the legal representative of a deceased member or member under legal disability:

- (1) Without demand, information concerning the company's business or affairs reasonably required for the proper exercise of the member's rights and performance of the member's duties under the operating agreement or this chapter; and
- (2) On demand, other information concerning the company's business or affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(c) A member has the right, upon a signed record given to the limited liability company, to obtain at the company's expense a copy of any operating agreement in record form.

**§ -409 General standards of member's and manager's conduct.** (a) The only fiduciary duties a member owes to a member-managed limited liability company and its other members are the duty of loyalty and the duty of care imposed by subsections (b) and (c).

(b) A member's duty of loyalty to a member-managed limited liability company and its other members is limited to the following:

- (1) To account to the company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business or derived from a use by the member of the company's property, including the appropriation of a company's opportunity;
- (2) To refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and
- (3) To refrain from competing with the company in the conduct of the company's business before the dissolution of the company.

(c) A member's duty of care to a member-managed limited liability company and its other members in the conduct of and winding up of the company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A member shall discharge the duties to a member-managed limited liability company and its other members under this chapter or under the operating agreement and exercise any rights consistent with the obligation of good faith and fair dealing.

(e) A member of a member-managed limited liability company does not violate a duty or obligation under this chapter or under the operating agreement merely because the member's conduct furthers the member's own interest.

(f) A member of a member-managed limited liability company may lend money to and transact other business with the company. As to each loan or

transaction, the rights and obligations of the member are the same as those of a person who is not a member, subject to other applicable laws.

(g) This section applies to a person winding up the limited liability company's business as the personal or legal representative of the last surviving member as if the person were a member.

(h) In a manager-managed limited liability company:

- (1) A member who is not also a manager owes no duty to the company or to the other members solely by reason of being a member;
- (2) A manager is held to the same standards of conduct prescribed for members in subsections (b) to (f);
- (3) A member who pursuant to the operating agreement exercises some or all of the rights of a manager in the management and conduct of the company's business is held to the standards of conduct in subsections (b) to (f) to the extent that the member exercises the managerial authority vested in a manager by this chapter; and
- (4) A manager is relieved of liability imposed by law for violation of the standards prescribed by subsections (b) to (f) to the extent of the managerial authority delegated to the members by the operating agreement.

**§ -410 Actions by members.** (a) A member may maintain an action against a limited liability company or another member for legal or equitable relief, with or without an accounting as to the company's business, to enforce:

- (1) The member's rights under the operating agreement;
- (2) The member's rights under this chapter; and
- (3) The rights and otherwise protect the interests of the member, including rights and interests arising independently of the member's relationship to the company.

(b) The accrual, and any time limited for the assertion, of a right of action for a remedy under this section shall be governed by other laws. A right to an accounting upon dissolution and winding up does not revive a claim barred by law.

**§ -411 Continuation of limited liability company after expiration of specified term.** (a) If a limited liability company that has a specified term is continued after the expiration of the term, the rights and duties of the members and managers remain the same as they were at the expiration of the term, except to the extent inconsistent with rights and duties of members and managers of an at-will company.

(b) If the members in a member-managed limited liability company or the managers in a manager-managed company continue the business without winding up the business of the company, the company shall continue as an at-will company.

## PART V. TRANSFEREES AND CREDITORS OF MEMBERS

**§ -501 Member's distributional interest.** (a) A member is not a co-owner of, and has no transferable interest in, property of a limited liability company.

(b) A distributional interest in a limited liability company is personal property and, subject to sections -502 and -503, may be transferred in whole or in part.

(c) An operating agreement may provide that a distributional interest may be evidenced by a certificate of the interest issued by the limited liability company and, subject to section -503, may also provide for the transfer of any interest represented by the certificate.

**§ -502 Transfer of distributional interest.** A transfer of a distributional interest does not entitle the transferee to become or to exercise any rights of a member. A transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled. A member ceases to be a member upon transfer of all of the member's distributional interest, other than a transfer for security purposes, or a court order charging the member's distributional interest, which has not been foreclosed.

**§ -503 Rights of a transferee.** (a) A transferee of a distributional interest may become a member of a limited liability company if and to the extent that the transferor gives the transferee such a right in accordance with authority described in the operating agreement or all of the other members consent.

(b) A transferee who has become a member, to the extent transferred, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement of a limited liability company and this chapter. A transferee who becomes a member also is liable for the transferor member's obligations to make contributions under section -402 and for obligations under section -407 to return unlawful distributions; provided that the transferee shall not be obligated for the transferor member's liabilities unknown to the transferee at the time the transferee becomes a member and shall not be personally liable for any obligation of the company incurred before the transferee's admission as a member.

(c) Regardless of whether a transferee of a distributional interest becomes a member under subsection (a), the transferor shall not be released from liability to the limited liability company under the operating agreement or this chapter.

(d) A transferee who does not become a member is not entitled to participate in the management or conduct of the limited liability company's business, require access to information concerning the company's transactions, or inspect or copy any of the company's records.

(e) A transferee who does not become a member is entitled to:

- (1) Receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;
- (2) Receive, upon dissolution and winding up of the limited liability company's business:
  - (A) In accordance with the transfer, the net amount otherwise distributable to the transferor; and
  - (B) A statement of account only from the date of the latest statement of account agreed to by all the members; and
- (3) Seek under section -801(6), a judicial determination that it is equitable to dissolve and wind up the company's business.

(f) A limited liability company need not give effect to a transfer until the company has notice of the transfer.

**§ -504 Rights of creditors.** (a) On application by a judgment creditor of a member of a limited liability company or a member's transferee, a court having jurisdiction may order that the distributional interest of the judgment debtor be used to satisfy the judgment. The court may appoint a receiver to carry out the provisions of the charging order.

(b) A charging order constitutes a lien on the judgment debtor's distributional interest. The court may order a foreclosure of a lien on a distributional interest subject to the charging order at any time. A purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, a distributional interest in a limited liability company which is charged may be redeemed:

- (1) By the judgment debtor;

- (2) With property other than the company's property, by one or more of the other members; or
- (3) With the company's property, but only if permitted by the operating agreement.

(d) This chapter does not affect a member's right under exemption laws with respect to the member's distributional interest in a limited liability company.

(e) This section provides the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's distributional interest in a limited liability company.

## PART VI. MEMBER'S DISSOCIATION

**§ -601 Events causing a member's dissociation.** A member is dissociated from a limited liability company upon the occurrence of any of the following events:

- (1) The company's having notice of the member's express will to withdraw upon the date of notice or on a later date specified by the member;
- (2) An event agreed to in the operating agreement as causing the member's dissociation;
- (3) The member's expulsion pursuant to the operating agreement;
- (4) The member's expulsion by the unanimous vote of the other members if:
  - (A) It is unlawful to carry on the company's business with the member;
  - (B) There has been a transfer of substantially all of the member's distributional interest, other than a transfer for security purposes, or a court order charging the member's distributional interest, which has not been foreclosed;
  - (C) Within ninety days after the company notifies a corporate member that it will be expelled because it has filed articles of dissolution or the equivalent, its registration has been revoked, dissolved, or canceled, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the member fails to obtain a revocation of the dissolution proceedings or a reinstatement of its articles or its right to conduct business; or
  - (D) A partnership or a limited liability company that is a member has been dissolved and its business is being wound up;
- (5) On application by the company or another member, the member's expulsion by judicial determination because the member:
  - (A) Engaged in wrongful conduct that adversely and materially affected the company's business;
  - (B) Wilfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under section -409; or
  - (C) Engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the member;
- (6) If the member:
  - (A) Becomes a debtor in bankruptcy;
  - (B) Executes an assignment for the benefit of creditors;
  - (C) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property; or

- (D) Fails, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;
- (7) In the case of a member who is an individual:
  - (A) The member's death;
  - (B) The appointment of a guardian or general conservator for the member; or
  - (C) A judicial determination that the member has otherwise become incapable of performing the member's duties under the operating agreement;
- (8) In the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the company, but not merely by reason of the substitution of a successor trustee;
- (9) In the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's entire rights to receive distributions from the company, but not merely the substitution of a successor personal representative;
- (10) Termination of the existence of a member if the member is not an individual, estate, or trust other than a business trust; or
- (11) A termination of a member's continued membership in a limited liability company for any other reason.

**§ -602 Member's power to dissociate; wrongful dissociation.** (a) A member has the power to dissociate from a limited liability company at any time, rightfully or wrongfully, by express will.

(b) A member's dissociation from a limited liability company is wrongful only if:

- (1) It is in breach of an express provision of the operating agreement; or
- (2) Before the expiration of the term of a company having a specified term:
  - (A) The member withdraws by express will;
  - (B) The member is expelled by judicial determination under section -601(5);
  - (C) The member is dissociated by becoming a debtor in bankruptcy; or
  - (D) In the case of a member who is not an individual, trust other than a business trust, or estate, the member is expelled or otherwise dissociated because it wilfully dissolved or terminated its existence.

(c) A member who wrongfully dissociates from a limited liability company is liable to the company and to the other members for damages caused by the dissociation. The liability is in addition to any other obligation of the member to the company or to the other members.

(d) If a limited liability company does not dissolve and wind up its business as a result of a member's wrongful dissociation under subsection (b), damages sustained by the company for the wrongful dissociation shall be offset against distributions otherwise due the member after the dissociation.

**§ -603 Effect of a member's dissociation.** (a) If under section -801 a member's dissociation from a limited liability company results in a dissolution and winding up of the company's business, part VIII shall apply. If a member's



dissociation from the company does not result in a dissolution and winding up of the company's business under section -801:

- (1) In an at-will company, the company shall cause the dissociated member's company interest to be purchased under part VII; and
- (2) In a company having a specified term:
  - (A) If the company dissolves and winds up its business on or before the expiration of its specified term, part VIII applies to determine the dissociated member's rights to distributions; and
  - (B) If the company does not dissolve and wind up its business on or before the expiration of its specified term, the company must cause the dissociated member's distributional interest to be purchased under part VII on the date of the expiration of the term specified at the time of the member's dissociation.
- (b) Upon a member's dissociation from a limited liability company:
  - (1) The member's right to participate in the management and conduct of the company's business terminates, except as provided in section -803, and the member ceases to be a member and is treated the same as a transferee;
  - (2) The member's duty of loyalty under section -409(b)(3) terminates; and
  - (3) The member's duty of loyalty under section -409(b)(1) and (2) and duty of care under section -409(c) continue only with regard to matters arising and events occurring prior to the member's dissociation, unless the member participates in winding up the company's business pursuant to section -803.

## PART VII. MEMBER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

**§ -701 Company purchase of distributional interest.** (a) A limited liability company shall purchase a distributional interest of a member of:

- (1) An at-will limited liability company for its fair value determined as of the date of the member's dissociation if the member's dissociation does not result in a dissolution and winding up of the company's business under section -801; or
- (2) A company having a specified term for its fair value determined as of the date of the expiration of the specified term that existed on the member's dissociation if the expiration of the specified term does not result in a dissolution and winding up of the company's business under section -801.

(b) A limited liability company shall deliver a purchase offer to the dissociated member whose distributional interest is entitled to be purchased no later than thirty days after the date determined under subsection (a). The purchase offer shall be accompanied by:

- (1) A statement of the company's assets and liabilities as of the date determined under subsection (a);
- (2) The latest available balance sheet and income statement, if any; and
- (3) An explanation of how the estimated amount of the payment was calculated.

(c) If the price and other terms of a purchase of a distributional interest are fixed or are to be determined by the operating agreement, the price and terms so fixed or determined govern the purchase unless the purchaser defaults. In that case the dissociated member is entitled to commence a proceeding to have the company dissolved under section -801(5).

(d) If an agreement to purchase the distributional interest is not made within one-hundred-twenty-days after the date determined under subsection (a), the dissociated member, within another one-hundred-twenty-days, may commence a proceeding against the limited liability company to enforce the purchase. The company at its expense shall notify in writing all of the remaining members, and any other person the court directs, of the commencement of the proceeding. The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary and exclusive.

(e) The court shall determine the fair value of the distributional interest in accordance with the standards set forth in section -702 together with the terms for the purchase. Upon making these determinations, the court shall order the limited liability company to purchase or cause the purchase of the interest.

(f) Damages for wrongful dissociation under section -602(b), and all other amounts owed, whether or not currently due, from the dissociated member to a limited liability company, shall be offset against the purchase price.

**§ -702 Court action to determine fair value of distributional interest.**

(a) In an action brought to determine the fair value of a distributional interest in a limited liability company, the court shall:

- (1) Determine the fair value of the interest, considering among other relevant evidence the going concern value of the company, any agreement among some or all of the members fixing the price, or specifying a formula for determining the value of distributional interests for any purpose, the recommendations of any appraiser appointed by the court, and any legal constraints on the company's ability to purchase the interest;
- (2) Specify the terms of the purchase, including if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the company's other creditors, security for a deferred purchase price, and a covenant not to compete or other restrictions on a dissociated member; and
- (3) Require the dissociated member to deliver an assignment of the interest to the purchaser upon receipt of the purchase price or the first installment of the purchase price.

(b) After an order to purchase is entered, a party may petition the court to modify the terms of the purchase and the court may do so if it finds that changes in the financial or legal ability of the limited liability company or other purchaser to complete the purchase justify a modification.

(c) After the dissociated member delivers the assignment, the dissociated member shall have no further claim against the company, or its members, officers, or managers, if any, other than a claim to any unpaid balance of the purchase price and a claim under any agreement with the company or the remaining members that is not terminated by the court.

(d) If the purchase is not completed in accordance with the specified terms, the company is to be dissolved upon application under section -801(5)(D). If a limited liability company is so dissolved, the dissociated member shall have the same rights and priorities in the company's assets as if the sale had not been ordered.

(e) If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or not in good faith, it may award one or more other parties their reasonable expenses, including attorney's fees and the expenses of appraisers or other experts, incurred in the proceeding. The finding may be based on the company's failure to make an offer to pay or to comply with section -701(b).

(f) Interest shall be paid on the amount awarded from the date determined under section -701(a) to the date of payment.

§ -703 Dissociated member's power to bind the limited liability company. Provided that the dissociation does not result in a dissolution and winding up of a limited liability company's business, for two years after a member dissociates from the company, the company, including a surviving company under part IX, shall be bound by an act of the dissociated member which would have bound the company under section -301 before dissociation only if at the time of entering into the transaction the other party:

- (1) Reasonably believed that the dissociated member was then a member;
- (2) Did not have notice of the member's dissociation; and
- (3) Is not deemed to have had notice under section -704.

§ -704 Statement of dissociation. (a) A dissociated member or a limited liability company may file in the office of the director a statement of dissociation stating the name of the company and that the member is dissociated from the company.

(b) For the purposes of sections -301 and -703, a person not a member is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

## PART VIII. WINDING UP THE COMPANY'S BUSINESS

§ -801 Events causing dissolution and winding up of company's business. A limited liability company is dissolved, and its business shall be wound up, upon the occurrence of any of the following events:

- (1) An event specified in the operating agreement;
- (2) Consent of the number or percentage of members specified in the operating agreement;
- (3) Dissociation of a member-manager or, if none, a member of an at-will company, and dissociation of a member manager or, if none, a member of a company having a specified term but only if the dissociation was for a reason provided in section -601(6) to (10) and occurred before the expiration of the specified term, provided that the company is not dissolved and required to be wound up by reason of the dissociation:
  - (A) If, within ninety days after the dissociation, a majority of the remaining members agree to continue the business of the company; or
  - (B) The business of the company is continued under a right to continue stated in the operating agreement;
- (4) An event that makes it unlawful for all or substantially all of the business of the company to be continued, provided that any cure of illegality within ninety days after notice to the company of the event shall be effective retroactively to the date of the event for purposes of this section;
- (5) On application by a member or a dissociated member, upon entry of a judicial decree that:
  - (A) The economic purpose of the company is likely to be unreasonably frustrated;
  - (B) Another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member;
  - (C) It is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;

- (D) The company failed to purchase the petitioner's distributional interest as required by section -701; or
- (E) The managers or members in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner;
- (6) On application by a transferee of a member's interest, a judicial determination that it is equitable to wind up the company's business:
  - (A) After the expiration of the specified term, if the company was for a specified term at the time the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer; or
  - (B) At any time, if the company was at-will at the time the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer; or
- (7) The expiration of a specified term.

**§ -802 Limited liability company continues after dissolution.** (a) Subject to subsection (b), a limited liability company continues after dissolution only for the purpose of winding up its business.

(b) At any time after the dissolution of a limited liability company and before the winding up of its business is completed, the members, including a dissociated member whose dissociation caused the dissolution, may unanimously waive the right to have the company's business wound up and the company terminated. In that case:

- (1) The limited liability company resumes carrying on its business as if dissolution had never occurred and any liability incurred by the company or a member after the dissolution and before the waiver is determined as if the dissolution had never occurred; and
- (2) The rights of a third party accruing under section -804(a) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver are not adversely affected.

**§ -803 Right to wind up the limited liability company's business.** (a) After dissolution, a member who has not wrongfully dissociated may participate in winding up a limited liability company's business; provided that on application of any member, member's legal representative, or transferee, the circuit court, for good cause shown, may order judicial supervision of the winding up.

(b) A legal representative of the last surviving member may wind up a limited liability company's business.

(c) A person winding up a limited liability company's business may preserve the company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the company's business, dispose of and transfer the company's property, discharge the company's liabilities, distribute the assets of the company pursuant to section -806, settle disputes by mediation or arbitration, and perform other necessary acts and shall publish notice of intent to terminate as provided in section -808.

**§ -804 Member's or manager's power and liability as agent after dissolution.** (a) A limited liability company is bound by a member's or manager's act after dissolution that:

- (1) Is appropriate for winding up the company's business; or

- (2) Would have bound the company under section -301 before dissolution if the other party to the transaction did not have notice of the dissolution.

(b) A member or manager who, with knowledge of the dissolution, subjects a limited liability company to liability by an act that is not appropriate for winding up the company's business is liable to the company for any damage caused to the company arising from the liability.

**§ -805 Articles of termination.** (a) At any time after dissolution and winding up, and when all debts, liabilities, and obligations of the limited liability company have been paid and discharged, or adequate provision has been made therefor, and all remaining property and assets of the limited liability company, if any, have been distributed to its members, a limited liability company may terminate its existence by delivering for filing with the director articles of termination stating:

- (1) The name of the company;
- (2) The dates the notice of intent to terminate was published pursuant to section -808 and the name of the newspaper publishing the notice;
- (3) That all debts, obligations, and liabilities of the limited liability company have been paid and discharged or that adequate provision has been made therefor;
- (4) That all of the remaining property and assets of the limited liability company, if any, have been distributed among its members in accordance with their respective rights and interests;
- (5) That there are no suits pending against the limited liability company in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit; and
- (6) That the company's business has been wound up and the legal existence of the company has been terminated.

(b) The existence of a limited liability company is terminated upon the filing of the articles of termination or upon a later effective date which shall be not later than thirty days after the date of filing of the articles of termination, if specified in the articles of termination.

**§ -806 Distribution of assets in winding up the limited liability company's business.** (a) In winding up a limited liability company's business, the assets of the company shall be used to discharge its obligations to creditors, including members who are creditors. Any surplus shall be used to pay in money the net amount distributable to members in accordance with their rights to distribution under subsection (b).

(b) Each member is entitled to a distribution upon the winding up of the limited liability company's business consisting of a return of all contributions which have not previously been returned and a distribution of any remainder in equal shares.

**§ -807 Known claims against dissolved limited liability company.** (a) A dissolved limited liability company may dispose of the known claims against it by following the procedure described in this section.

(b) A dissolved limited liability company shall notify its known claimants in writing of the intent to terminate within thirty days from the first publication of the notice of intent to terminate published pursuant to section -808. The notice shall:

- (1) Specify the information required to be included in a claim;
- (2) Provide a mailing address where the claim is to be sent;

- (3) State the deadline for receipt of the claim, which may not be less than one-hundred-twenty-days after the date the written notice is received by the claimant; and
- (4) State that the claim will be barred if not received by the deadline.
- (c) A claim against a dissolved limited liability company is barred if the requirements of subsection (b) are met, and:
  - (1) The claim is not received by the specified deadline; or
  - (2) In the case of a claim that is timely received but rejected by the dissolved company, the claimant does not commence a proceeding to enforce the claim within ninety days after the receipt of the notice of the rejection.
- (d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

**§ -808 Notice; other claims against dissolved limited liability company.** (a) A dissolved limited liability company that intends to terminate shall publish notice of its intent to terminate and request persons having claims against the company to present them in accordance with the notice; provided that a dissolved limited liability company, with the approval of the director, may omit the publication of the notice if the limited liability company has insufficient assets to pay for publication.

- (b) The notice shall:
  - (1) Be published at least once in each of four successive weeks (four publications) in a newspaper of general circulation in this State;
  - (2) Describe the information required to be contained in a claim and provide a mailing address where the claim is to be sent; and
  - (3) State that a claim against the limited liability company is barred unless a proceeding to enforce the claim is commenced within two years after the later of the last publication date of the notice or the date of filing of the articles of termination.
- (c) If a dissolved limited liability company publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved company within two years after the later of the last publication date of the notice or the date of filing of the articles of termination:
  - (1) A claimant who did not receive written notice under section -807;
  - (2) A claimant whose claim was timely sent to the dissolved company but not acted on; and
  - (3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
- (d) A claim not barred under this section may be enforced:
  - (1) Against the dissolved limited liability company, to the extent of its undistributed assets; or
  - (2) If the assets have been distributed in liquidation, against a member of the dissolved company to the extent of the member's proportionate share of the claim or the company's assets distributed to the member in liquidation, whichever is less; provided that a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

**§ -809 Grounds for administrative termination.** The director may commence a proceeding to terminate a limited liability company administratively if the company has not, pursuant to section -210, filed its annual report for a period of two years.

**§ -810 Procedure for and effect of administrative termination.** (a) If the director determines that a ground exists to terminate administratively, a limited liability company, the director may declare the company terminated. Before the director declares a limited liability company terminated, the director shall mail a notice of the grounds for termination to the company and shall publish notice of the intention to terminate the limited liability company once in each of three successive weeks (three publications) in a newspaper of general circulation in this State.

(b) If the company does not correct each ground for termination or demonstrate to the reasonable satisfaction of the director that each ground determined by the director does not exist within sixty days after mailing of the notice and the last publication date of the notice of intention to terminate the limited liability company, the director shall administratively terminate the company by signing a decree of termination that recites the ground for termination and its effective date.

(c) A company administratively terminated continues its existence temporarily but may carry on only business necessary to wind up and liquidate its business and affairs under section -802 and to notify claimants under sections -807 and -808. The company ceases existence upon the completion of these matters.

(d) The administrative termination of a company does not terminate the authority of its agent for service of process.

(e) Any manager, member, or creditor of an administratively terminated limited liability company may petition the circuit court to appoint a trustee to settle its affairs. If a trustee is appointed, the trustee shall pay to the State out of any funds that may come into the trustee's possession as trustee a sum equal to any penalties imposed pursuant to section -1302. Up until the time a trustee is appointed by the circuit court, or indefinitely if a trustee is not appointed by the circuit court, the last managers of the limited liability company if the company was manager-managed, or if not manager-managed the last members of the limited liability company, shall be and act as trustees for the creditors and members of the limited liability company with full powers to settle its affairs.

(f) The director shall deliver a copy of the decree of termination for each administratively terminated limited liability company to the director of taxation and financial officer of each county.

**§ -811 Reinstatement following administrative termination.** (a) A limited liability company administratively terminated may apply to the director for reinstatement within ninety days after the effective date of termination. The application shall:

- (1) Recite the name of the company and the effective date of its administrative termination;
  - (2) State that all delinquent annual reports have been filed and that all delinquent fees, penalties, assessments, and costs have been paid, and
  - (3) Contain a certificate from the director of taxation reciting that all taxes owed by the company have been paid.
- (b) The director shall issue an order of reinstatement if:
- (1) The application for reinstatement meets the requirements of subsection (a);
  - (2) The name of the limited liability company satisfies the requirements of section -105;
  - (3) Articles of amendment to change the name of the limited liability company are filed if the name of the company does not satisfy the requirements of section -105; and
  - (4) The delinquent annual reports have been filed and the appropriate fees and penalties have been paid.

(c) When granted, the reinstatement relates back to and takes effect as of the effective date of the administrative termination and the company may resume its business as if the administrative termination had never occurred.

§ -812 **Appeal from denial of reinstatement.** (a) If the director denies a limited liability company's application for reinstatement following administrative dissolution, the director shall notify the company of the reason or reasons for denial.

(b) The company may appeal the denial of reinstatement to the circuit court within thirty days after the mailing of notification of the denial. The company appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the director's decree of termination, the company's application for reinstatement, and the director's notice of denial.

(c) The court may summarily order the director to reinstate the dissolved company or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

## PART IX. CONVERSIONS AND MERGERS

§ -901 **Definitions.** In this part:

"Corporation" means a corporation under the Hawaii Business Corporation Act, chapter 415, a predecessor law, or comparable law of another jurisdiction.

"General partner" means a partner in a partnership and a general partner in a limited partnership.

"Limited partner" means a limited partner in a limited partnership.

"Limited partnership" means a limited partnership created under the Uniform Limited Partnership Act, chapter 425D, a predecessor law, or comparable law of another jurisdiction.

"Partner" includes a general partner and a limited partner.

"Partnership" or "general partnership" means a general partnership created under chapter 425, a predecessor law, or comparable law of another jurisdiction.

"Partnership agreement" means an agreement among the partners concerning the partnership or limited partnership.

"Shareholder" means a shareholder in a corporation.

§ -902 **Conversion of partnerships or limited partnerships to limited liability company.** (a) A domestic partnership or domestic limited partnership may be converted into a domestic limited liability company pursuant to this section.

(b) The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company shall be approved by all of the partners or by the number or percentage of the partners required for conversion in the partnership agreement.

(c) An agreement of conversion approved under subsection (b) shall set forth the terms and conditions of the conversion of the interests of the general partners in the case of a general partnership and the interests of the general partners and limited partners in the case of limited partnership, being converted into interests in the limited liability company and any cash or other consideration to be paid or delivered as a result of the conversion or any combination thereof.

(d) Upon compliance with subsection (b) and section -908, the general partnership or limited partnership shall file articles of organization in the office of the director which satisfy the requirements of section -203 and contain:

- (1) A statement that the general partnership or limited partnership was converted to a limited liability company;
- (2) The name of the former partnership or limited partnership;



- (3) A statement detailing the approvals by the general partners in the case of a general partnership conversion, and the general partners and limited partners in the case of a limited partnership conversion, noting the respective votes taken required to approve the conversion under subsection (b);
- (4) A statement of cancellation of the partnership registration statement in the case of a general partnership conversion, or a statement of cancellation of the certificate of limited partnership in the case of a limited partnership conversion, specifying an effective date as provided in subsection (f) if the effective date is not to be the date of filing; and
- (5) A statement of compliance with section -908.

(e) In the case of a general or limited partnership, the filing of the articles of organization under subsection (d) cancels the partnership registration statement or the certificate of limited partnership.

(f) A conversion becomes effective upon the filing of the articles of organization or upon the time and date subsequent to the filing as set forth in the articles but not more than thirty days after being filed.

(g) A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a general partner for any obligation incurred by the general partnership or limited partnership before the conversion has taken effect. A general partner's liability for all obligations of the limited liability company incurred after the conversion becomes effective shall be that of a member of the limited liability company.

(h) A limited partner who becomes a member as a result of a conversion remains liable only to the extent the limited partner was liable for an obligation incurred by the limited partnership before the conversion takes effect.

**§ -903 Effect of conversion; entity unchanged.** (a) A general partnership or limited partnership that has been converted to a limited liability company pursuant to section -902 shall be considered the same legal entity that existed prior to the conversion, the only change shall be the form in which the legal entity now exists.

(b) When the conversion takes effect:

- (1) All property owned by the converting general partnerships or limited partnerships is vested in the limited liability company;
- (2) All debts, liabilities, and other obligations of the converting general partnership or limited partnership continue as obligations of the limited liability company;
- (3) Any action or proceeding pending by or against the converting general partnership or limited partnership may be continued as if the conversion had not occurred and the limited liability company may be substituted as a party to the action or proceeding;
- (4) Except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of the converting general partnership or limited partnership are vested in the limited liability company; and
- (5) Except as otherwise provided in the agreement of the conversion under section -902(c), all of the partners of the converting general partnership or limited partnership shall continue as members of the limited liability company.

**§ -904 Merger.** (a) Pursuant to a plan of merger approved under subsection (c), one or more domestic or foreign limited liability companies, one or more domestic or foreign general or limited partnerships, and one or more domestic or

foreign corporations may be merged into a domestic or foreign limited liability company.

(b) A plan of merger shall set forth:

- (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger;
- (2) The name of the surviving limited liability company into which the other entity or entities will merge;
- (3) The terms and conditions of the merger;
- (4) The manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving company, or into money or other property in whole or in part;
- (5) The street address of the surviving company's principal place of business, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and
- (6) Amendments, if any, to the articles of organization of the surviving company.

(c) A plan of merger shall be approved:

- (1) In the case of a limited liability company that is a party to the merger, by the members representing the percentage of ownership specified in the operating agreement, but not fewer than the members holding a majority of the ownership, or if provision is not made in the operating agreement, by all the members;
- (2) In the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;
- (3) In the case of a corporation that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the corporation is organized;
- (4) In the case of a domestic limited partnership that is a party to the merger, by all of the partners;
- (5) In the case of a foreign limited partnership that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the foreign limited partnership is organized;
- (6) In the case of a domestic general partnership that is a party to the merger, by the vote of all partners; and
- (7) In the case of a foreign general partnership that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the foreign general partnership is organized.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger shall be effective upon the filing of the articles of merger with the director or at such later date and time as the articles may provide, but not more than thirty days after the filing.

**§ -905 Articles of merger.** (a) After approval of the plan of merger under section -904(c) and compliance with section -908, if applicable, unless the merger is abandoned under section -904(d), articles of merger shall be signed on behalf of each limited liability company and each other entity that is a party to the merger and delivered to the director for filing. The articles shall set forth and contain:

- (1) The name and jurisdiction of formation or organization of each of the entities that are parties to the merger;
  - (2) The plan of merger;
  - (3) A statement, signed by each entity that is a party to the merger, that the plan of merger was approved;
  - (4) As to each entity, the total authorized votes and the number voted for and against the plan;
  - (5) The name and address of the surviving company;
  - (6) The effective date and time of the merger, which shall be not earlier than the date and time of filing of the articles of merger and not later than thirty days after the filing of the articles of merger;
  - (7) If the surviving entity is a foreign limited liability company, it shall file with the director;
    - (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
    - (B) An irrevocable appointment of a resident of this State including the street address, as its agent to accept service of process in any such proceeding; and
    - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder or partner to receive payment for their interest against the surviving entity; and
  - (8) A statement of compliance with section -908, if applicable.
- (b) If a foreign limited liability company is the surviving entity of a merger, it shall not do business in this State until an application for that authority is filed with the director.
- (c) The surviving company shall furnish a copy of the plan of merger, on request and without cost, to any member, shareholder, or partner of any entity that is a party to the merger.
- (d) Articles of merger operate as an amendment to the limited liability company's articles of organization.

**§ -906 Effect of merger.** (a) When a merger takes effect:

- (1) The separate existence of each entity that is a party to the merger, other than the surviving company, terminates;
  - (2) All property owned by each of the entities that are parties to the merger vests in the surviving company;
  - (3) All debts, liabilities, and other obligations of each entity that is a party to the merger become the obligations of the surviving company.
  - (4) An action or proceeding pending by or against an entity that is party to a merger may be continued as if the merger had not occurred or the surviving company may be substituted as a party to the action or proceeding; and
  - (5) Except as prohibited by other law, all rights, privileges, immunities, powers, and purposes of every entity that is a party to a merger become vested in the surviving company.
- (b) If the surviving foreign limited liability company fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving foreign limited liability company by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving company at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (1) The date the company receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the company; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

(c) A member of the surviving limited liability company shall be liable for all obligations of a party to the merger for which the member was personally liable prior to the merger.

(d) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to wind up its business under this chapter or pay its liabilities and distribute its assets pursuant to this chapter.

(e) Articles of merger shall serve as articles of termination for a limited liability company that is not the surviving company in the merger.

**§ -907 Dissenters' rights.** The shareholders of a domestic corporation that is a party to a merger authorized by section -904 have the rights of dissenting shareholders in the manner provided in section 415-81.

**§ -908 Notice of conversion or merger of partnership or limited partnership.** A partnership or limited partnership which intends to be converted to a limited liability company pursuant to sections -902 and -903 or which intends to be party to a merger into a limited liability company pursuant to sections -905 to -907, shall:

- (1) Publish, once in each of three successive weeks (three publications) in a newspaper of general circulation published in the State, notice thereof to the public, and
- (2) Make reasonable efforts to give notice thereof in a reasonable manner to persons with whom the partnership or limited partnership expects to have a continuing business relationship as of the time of the conversion or merger. A partnership or limited partnership which determines in a reasonable manner the persons to whom such notice is given shall be in compliance with this section even if notice is not received by all persons with whom the partnership or limited partnership conducted business prior to the conversion or merger or by all persons with whom the limited liability conducts business after the conversion.

## **PART X. FOREIGN LIMITED LIABILITY COMPANIES**

**§ -1001 Law governing foreign limited liability companies.** (a) The laws of the state or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability of its managers, members, and their transferees.

(b) A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the laws of another jurisdiction under which the foreign limited liability company is organized and the laws of this State.

(c) A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in this State.

**§ -1002 Application for certificate of authority.** (a) A foreign limited liability company may apply for a certificate of authority to transact business in this State by delivering an application to the director for filing. The application shall set forth:

- (1) The name of the foreign limited liability company or, if its name is unavailable for use in this State, a name that satisfies the requirements of section -1005;
  - (2) The name of the state or country under whose law it is organized;
  - (3) The street address of its principal office, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service, and a representation and warranty that a list of the names of and addresses of all members and their respective capital contributions are kept and will be kept at this principal office until cancellation, in accordance with section -1007, of the foreign limited liability company's authority to transact business in this State;
  - (4) The street address of its initial designated office in this State or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service;
  - (5) The name and street address of its initial agent for service of process in this State;
  - (6) Whether the duration of the company is for a specified term and, if so, the period specified;
  - (7) Whether the company is manager-managed, and:
    - (A) If so, the name and residence street address of each manager, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; or
    - (B) If not, the name and residence street address of each member, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service;
  - (8) Whether the members of the company are to be liable for its debts and obligations under a provision similar to section -303(c); and
  - (9) Any additional information as may be necessary or appropriate to enable the director to determine whether the foreign limited liability company is entitled to obtain authority to transact business in this State.
- (b) A foreign limited liability company shall deliver with the completed application a certificate of existence or a record of similar import authenticated by the secretary of state or other official having custody of company records in the state or country under whose law it is organized, which certificate shall be dated not earlier than thirty days prior to the filing of the application. If the certificate is in a foreign language, a translation under oath of the translator shall accompany the certificate.

**§ -1003 Activities not constituting transacting business.** (a) The activities of a foreign limited liability company that do not constitute transacting business in this State within the meaning of this part include:

- (1) Maintaining, defending, or settling an action or proceeding;
- (2) Holding meetings of its members or managers or carrying on any other activity concerning its internal affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;

- (6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts;
- (7) Creating or acquiring indebtedness, mortgages, or security interests in real or personal property;
- (8) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
- (9) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner; or
- (10) Transacting business in interstate commerce.

(b) For purposes of this part, the ownership in this State of income-producing real property or tangible personal property, other than property excluded under subsection (a), constitutes transacting business in this State.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under any other law of this State.

**§ -1004 Issuance of certificate of authority.** Unless the director determines that an application for a certificate of authority fails to comply as to form with the filing requirements of this chapter, the director, upon payment of all filing fees, shall file the application and issue a certificate of authority and mail it to the limited liability company or its representative.

**§ -1005 Name of foreign limited liability company.** (a) If the name of a foreign limited liability company does not satisfy the requirements of section -105, the company, to obtain or maintain a certificate of authority to transact business in this State, shall use a fictitious name to transact business in this State if its real name is unavailable.

(b) Except as authorized by subsections (c) and (d), the name, including a fictitious name, of a foreign limited liability company shall not be the same as or substantially identical to:

- (1) The name of any corporation, partnership, or limited liability company existing under the laws of this State;
- (2) The name of any foreign corporation, foreign partnership, or foreign limited liability company authorized to transact business in this State;
- (3) A name, the exclusive right to which is reserved under the laws of this State;
- (4) The fictitious name of another foreign limited liability company authorized to transact business in this State; or
- (5) Any tradename, service mark, or trademark registered in this State.

(c) A foreign limited liability company may apply to the director for authority to use in this State a name that is the same as, or is substantially identical to, a name described in subsection (b). The director may authorize use of a substantially identical name applied for if:

- (1) The present user, registrant, or owner of a reserved name consents in writing to the use of the name, and one or more words are added to make the name distinguishable upon the records of the director from the name of the foreign limited liability company; or
- (2) The applicant delivers to the director a certified copy of a final judgment of a court establishing the applicant's right to use the name applied for in this State.

(d) A foreign limited liability company may use in this State the name, including the fictitious name, of another domestic or foreign entity that is used in this

State if the other entity is incorporated, organized, or authorized to transact business in this State and the foreign limited liability company:

- (1) Has merged with the other entity; or
- (2) Has been formed by reorganization of the other entity.

(e) If a foreign limited liability company authorized to transact business in this State changes its name to one that does not satisfy the requirements of section -105, it shall not transact business in this State under the name as changed until it adopts a name satisfying the requirements of section -105 and obtains an amended certificate of authority.

**§ -1006 Revocation of certificate of authority.** (a) A certificate of authority of a foreign limited liability company to transact business in this State may be revoked by the director in the manner provided in subsection (b) if:

- (1) The company fails to:
  - (A) Pay any fees prescribed by law;
  - (B) File its annual report for a period of two years pursuant to section -210;
  - (C) Appoint and maintain an agent for service of process as required by this part; or
  - (D) File a statement of a change in the name or business address of the agent as required by this part; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the company pursuant to this part.

(b) The director may not revoke a certificate of authority of a foreign limited liability company unless the director sends the company notice of the revocation, at least sixty days before its effective date, by a record addressed to its agent for service of process in this State, or if the company fails to appoint and maintain a proper agent in this State, addressed to the office required to be maintained by section -107. The notice shall identify the cause for the revocation of the certificate of authority. If the foreign limited liability company does not cure its failure by the date specified in the notice of revocation, the director may issue a certificate of revocation in duplicate, file one of the certificates in the office of the director and mail the other certificate addressed as described in the preceding sentence to the foreign limited liability company. The authority of the company to transact business in this State shall cease upon the issuance of the certificate of revocation.

**§ -1007 Cancellation of authority.** (a) A foreign limited liability company may cancel its authority to transact business in this State by obtaining a certificate of cancellation. Cancellation does not terminate the authority of the director to accept service of process on the company for claims for relief arising out of the transactions of business in this State. In order to obtain a certificate of cancellation, the foreign limited liability company shall deliver to the director for filing an application for cancellation, which shall set forth:

- (1) The name and jurisdiction of formation or organization of the foreign limited liability company;
- (2) A statement that the foreign limited liability company is not transacting business in this State;
- (3) A statement that the foreign limited liability company surrenders its authority to transact business in this State;
- (4) A statement that the foreign limited liability company revokes the authority of its agent for service of process in this State and consents that the service of process for any claim for relief arising out of the

transactions of business in this State may be made on such foreign limited liability company by service upon the director;

- (5) The address to which a person may mail a copy of any process against the foreign limited liability company;
- (6) The dates the notice of cancellation was published pursuant to subsection (b) and the name of the newspaper publishing the notice; and
- (7) A statement that all taxes, debts, obligations, and liabilities of the foreign limited liability company in this State have been paid and discharged or that adequate provision has been made therefor.

(b) A foreign limited liability company intending to cancel its authority to transact business in this State shall publish notice of its cancellation and request persons having claims against the company to present them in accordance with the notice. The notice shall:

- (1) Be published at least once in each of four successive weeks (four publications) in a newspaper of general circulation in this State; and
- (2) Describe the information required to be contained in a claim and provide a mailing address where the claim may be sent.

(c) After the filing of the application for cancellation, the director shall issue a certificate of cancellation which shall be effective as of the date of the filing of the application for cancellation, and the authority of the foreign limited liability company to transact business in this State shall cease.

(d) A cancellation does not terminate the authority of the director to accept service of process on a foreign limited liability company with respect to causes of action arising out of the transaction of business in this State.

(e) The foreign limited liability company, with the approval of the director, may omit the publication of the notice if the limited liability company has insufficient assets to pay for the publication.

**§ -1008 Effect of failure to obtain certificate of authority.** (a) A foreign limited liability company transacting business in this State may not maintain an action or proceeding in this State unless it has a certificate of authority to transact business in this State.

(b) The failure of a foreign limited liability company to have a certificate of authority to transact business in this State does not impair the validity of a contract or act of the company or prevent the foreign limited liability company from defending an action or proceeding in this State.

(c) Limitations on the personal liability of managers, members, and their transferees are not waived solely by transacting business in this State without a certificate of authority.

(d) If a foreign limited liability company transacts business in this State without a certificate of authority, service of process may be made upon the company as set forth in section -110(b) at any address used by the company as its address for purposes of its business transactions.

(e) A foreign limited liability company which transacts business in this State without a certificate of authority, shall be liable to the State in an amount equal to all fees and penalties which would have been imposed by this chapter upon that foreign limited liability company had it obtained such a certificate and filed all records and reports required by this chapter. The attorney general may bring proceedings to recover all amounts due this State under the provisions of this section.

**§ -1009 Action by attorney general.** The attorney general may maintain an action to restrain a foreign limited liability company from transacting business in this State in violation of this part.



**§ -1010 Merger of foreign limited liability companies authorized to transact business in this State.** (a) Whenever a foreign limited liability company authorized to transact business in this State shall be a party to a statutory merger or consolidation under the laws of the jurisdiction in which it is organized, and is the surviving company, within thirty days after the merger or consolidation becomes effective, it shall deliver to the director a certificate evidencing the merger duly authenticated by the proper officer of the jurisdiction under which the statutory merger was effectuated. The certificate evidencing the merger or consolidation shall be evidence of an amendment changing the name if the name of the surviving entity is changed thereby. If the certificate is in a foreign language, a translation into English under oath of the translator shall accompany the certificate.

(b) If the surviving or new entity is not authorized to transact business in this State and does not intend to do so after the merger, it shall file an application for cancellation of the nonsurviving or consolidated foreign limited liability company's authority to transact business in this State in accordance with section -1007, together with the certificate evidencing the merger or consolidation.

(c) If the surviving or new entity intends to transact business in this State after the merger or consolidation, it may not do business in this State until an application for authority has been filed with the director.

## PART XI. DERIVATIVE ACTIONS

**§ -1101 Right of action.** A member of a limited liability company may maintain an action in the right of the company if the members or managers having authority to do so have refused to commence the action or an effort to cause those members or managers to commence the action is not likely to succeed.

**§ -1102 Proper plaintiff.** In a derivative action for a limited liability company, the plaintiff shall be a member of the company when the action is commenced, and:

- (1) Shall have been a member at the time of the transaction of which the plaintiff complains; or
- (2) The plaintiff's status as a member shall have devolved upon the plaintiff by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.

**§ -1103 Pleading.** In a derivative action for a limited liability company, the complaint must set forth with particularity the effort of the plaintiff to secure initiation of the action by a member or manager or the reasons for not making the effort.

**§ -1104 Expenses.** If a derivative action for a limited liability company is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the limited liability company the remainder of the proceeds received.

## PART XII. MISCELLANEOUS PROVISIONS

**§ -1201 Uniformity of application and construction.** This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

§ -1202 **Application of corporation case law to set aside limited liability.** In any case in which a party seeks to hold the members of a limited liability company personally responsible for the liabilities or alleged improper actions of the limited liability company, the court shall apply the case law which interprets the conditions and circumstances under which the corporate veil of a corporation may be pierced under the law of this State.

§ -1203 **Certificates and certified copies to be received in evidence.** All certificates issued by the director in accordance with this chapter, and all copies of records filed in the office of the director in accordance with this chapter when certified by the director, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the director under the seal of the department, as to the existence or nonexistence of the facts relating to a limited liability company or foreign limited liability company, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

§ -1204 **Interrogatories by director.** (a) The director may direct to any limited liability company or foreign limited liability company subject to this chapter, and to any member or manager of any limited liability company or foreign limited liability company subject to this chapter, any interrogatories reasonably necessary and proper to enable the director to ascertain whether the limited company or foreign limited liability company has complied with all of the provisions of this chapter applicable to the limited liability company or foreign limited liability company.

The interrogatories shall be answered within thirty days after the date of mailing, or within such additional time as shall be fixed by the director. The answers to the interrogatories shall be full and complete and shall be made in writing and under oath. If the interrogatories are directed to an individual, they shall be answered by the individual, and if directed to a limited liability company or foreign limited liability company, they shall be answered by a manager of a manager-managed company, a member of a member-managed company, or fiduciary if the company is in the hands of a receiver, trustee, or other court appointed fiduciary.

The director need not file any record in a court of competent jurisdiction to which the interrogatories relate until the interrogatories are answered as provided in this section, and not then if the answers thereto disclose that the record is not in conformity with the requirements of this chapter. The director shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers which disclose a violation of this chapter.

(b) Interrogatories initiated by the director and the answers shall not be open to public inspection, nor shall the director disclose any facts or information obtained through interrogatories, except insofar as the director's official duty may require the disclosure to be made public, or in the event the interrogatories or the answers are required for evidence in any criminal proceedings, or in any other action by this State.

### **PART XIII. FEES, CHARGES, AND PENALTIES**

§ -1301 **Fees.** The following fees shall be paid to the director upon the filing and issuance of records under this chapter:

- (1) Articles of organization, \$100;
- (2) Articles of amendment, \$50;
- (3) Restated articles of organization, \$50;
- (4) Articles of merger, \$200;
- (5) Statement of dissociation, \$50;

- (6) Articles of termination, \$50;
- (7) Application for reinstatement for administratively terminated limited liability company, \$50;
- (8) Annual report, \$25;
- (9) Statement of change of designated office or agent for service of process, or both, for limited liability company or foreign limited liability company, \$50;
- (10) Statement of resignation of agent for service of process, \$50;
- (11) Any other statement or document of a domestic or foreign limited liability company, \$50;
- (12) Application for certificate of authority for foreign limited liability company, \$100;
- (13) Application for cancellation of authority of foreign limited liability company, \$50;
- (14) Reservation of name, \$25;
- (15) Good standing certificate, \$25;
- (16) Any other record not otherwise covered in this part, \$50;
- (17) Certified copy of any record relating to a limited liability company or limited liability company, 25 cents per page, and \$10 for the certificate and affixing the seal thereto;
- (18) Special handling fee for review of any record other than articles of merger, \$80;
- (19) Special handling fee for review of articles of merger, \$200;
- (20) Special handling fee for certificates issued by the director not otherwise covered by this part, \$10 per certificate; and
- (21) Special handling fee for certification of record, \$1 per page; and
- (22) Any service of notice, demand, or process upon the director as agent for service of process of a limited liability company or foreign limited liability company, \$50, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

All special handling fees shall be credited to the special fund authorized by section 415-128.

**§ -1302 Penalties.** (a) Each limited liability company and foreign limited liability company that fails or refuses to file its annual report for any year within the time prescribed by this chapter shall be subject to a forfeiture of an amount to be determined by the director not exceeding \$100 for every such offense, violation, neglect, or failure, to be recovered by action brought in the name of the State by the director. A continuance of a failure to file the required statement shall be a separate offense for each thirty days of the continuance. The director, for good cause shown, may reduce or waive the penalty imposed by this section.

(b) Each limited liability company, domestic or foreign, that delivers for filing to, files, or causes to be filed with the director any record, statement, or other document required by this chapter which is known to the limited liability company to be false in any material respect, shall be guilty of a class C felony.

(c) Any person who signs or certifies as correct any record, statement, or other document filed pursuant to this chapter, knowing the same to be false in any material respect, shall be guilty of a class C felony.

(d) Any person who negligently but without intent to defraud signs or certifies as correct any record, statement, or other document filed pursuant to this chapter, which is false in any material particular, shall be punished by a fine not exceeding \$500.

(e) Each domestic or foreign limited liability company that knowingly fails or intentionally refuses to answer truthfully and fully within the time prescribed by this chapter interrogatories directed to the limited liability company by the director in accordance with this chapter shall be guilty of a class C felony.

(f) Any manager or member of a domestic or foreign limited liability company who knowingly fails or intentionally refuses within the time prescribed by this chapter to answer truthfully and fully interrogatories directed to the manager or member of a limited liability company by the director in accordance with this chapter shall be guilty of a class C felony.

(g) A person has "knowledge" of a fact within the meaning of this section not only when the person has actual knowledge, but also when the person has knowledge of the other facts as in the circumstances showing bad faith."

SECTION 2. Chapter 415, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§415- Merger with or into domestic or foreign limited liability company.** (a) As used in this section, the terms "limited liability company" and "foreign limited liability company" shall have the meanings defined in section -101.

(b) One or more corporations or foreign corporations may merge with or into one or more limited liability companies or foreign limited liability companies if in the case of a domestic corporation the board of directors and the shareholders approve a plan of merger as provided in sections 415-71 and 415-73, and in the case of a foreign corporation it complies with section 415-77.

(c) In addition to the requirements of section 415-74, the plan of merger shall also set forth:

- (1) The name of each limited liability company and foreign limited liability company proposing to merge; and
- (2) If the surviving entity is a limited liability company or a foreign limited liability company:
  - (A) The manner and basis of converting the shares of each corporation or foreign corporation and the interests as members of each limited liability company or foreign limited liability company into interests as members of the surviving domestic limited liability company or foreign limited liability company pursuant to such merger, or a statement that such information is contained in the operating agreement proposed for such surviving entity;
  - (B) The contents of the articles of organization of the surviving entity pursuant to such merger in accordance with section -203 if a domestic limited liability company is the surviving entity, or in accordance with comparable provisions of applicable law if a foreign limited liability company is the surviving entity; and
  - (C) The contents of the operating agreement to be entered into among the persons who will be the members of the surviving entity pursuant to the merger, which shall, if not separately provided in the plan of merger, state the manner and basis for the conversion of the shares of each merging corporation or foreign corporation and the interests as members of each merging limited liability company or foreign limited liability company into interests as members of the surviving entity and that notice of the approval of the merger will be deemed to be execution of the operating agreement by such persons.

(d) After a plan of merger is approved by the shareholders of each corporation and foreign corporation as provided in subsection (b), and by the members of each domestic limited liability company as provided in section -904, or as provided in comparable provisions of applicable law for each foreign limited liability company, the surviving entity shall deliver to the office of the director for filing articles of merger complying with section 415-74, executed on behalf of each party to the merger.

(e) Section 415-76 shall be applicable to each corporation that is a party to the plan of merger.

(f) If a foreign corporation is a party to the merger, section 415-77 shall apply to such foreign corporation."

SECTION 3. Chapter 425, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§425- Merger or conversion of domestic partnerships.** One or more domestic partnerships may be converted into or merged with a domestic limited liability company pursuant to section -902 or sections -904 to -906, as the case may be."

SECTION 4. Chapter 425D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§425D-<sup>1</sup> Merger or conversion of domestic limited partnerships.** One or more domestic limited partnerships may be converted into or merged with a domestic limited liability company pursuant to section -902 or sections -904 to -906, as the case may be."

SECTION 5. Section 415-8, Hawaii Revised Statutes, is amended to read as follows:

**"§415-8 Corporate name.** The corporate name:

- (1) Shall contain the word "corporation", "incorporated", or "limited", or shall contain an abbreviation of one of the words; and
- (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation [or], domestic partnership, or domestic limited liability company existing under the laws<sup>2</sup> this State, any foreign corporation [or], foreign partnership, or foreign limited liability company authorized to transact business in this State, any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, or the name of a corporation which has in effect a registration of its corporate name as provided in this chapter, except that this provision shall not apply if the applicant files with the director either of the following:
  - (A) The written consent of the other corporation or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name, or
  - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State."

SECTION 6. Section 415-95, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Within ninety days after the involuntary dissolution of a corporation under this section, the corporation may be reinstated by the director upon written application executed by any two officers of the corporation setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary dissolution, and the filing of all reports due and unfiled. Within the ninety-day period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation [or], partnership, or limited liability company, or should such name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily dissolved corporation pursuant to the amendment provisions of this chapter.”

SECTION 7. Section 415-108, Hawaii Revised Statutes, is amended to read as follows:

“**§415-108 Corporate name of foreign corporation.** No certificate of authority shall be issued to a foreign corporation unless its corporate name:

- (1) Is not the same as, or substantially identical to, the name of any domestic corporation [or], domestic partnership, or domestic limited liability company existing under the laws of this State or any foreign corporation [or], foreign partnership, or foreign limited liability company authorized to transact business in this State, any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, except that this provision shall not apply if the foreign corporation applying for a certificate of authority files with the director any one of the following:
  - (A) The written consent of such other corporation or holder of a reserved or registered name to use the same or substantially identical name and one or more words are added to make the name distinguishable from the other name;
  - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign corporation to the use of the name in this State; or
  - (C) A copy of a certificate of registration of a trade name by the foreign corporation under which trade name that foreign corporation will transact business in this State; and
- (2) Is transliterated into letters of the English alphabet, if the name is not in English.”

SECTION 8. Section 415A-8, Hawaii Revised Statutes, is amended to read as follows:

“**§415A-8 Corporate name.** The name of a professional corporation:

- (1) May be any name permitted by law expressly applicable to the profession in which the corporation is engaged or by a rule or regulation of the licensing authority of the profession;
- (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership [or trade name], or limited liability company, existing or registered under the laws of this State or any

foreign corporation [or], partnership, or limited liability company authorized to transact business, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in the Hawaii Business Corporation Act, chapter 415, or the name of a corporation which has registered its corporate name as provided in the Hawaii Business Corporation Act, chapter 415; except that this section shall not apply if the applicant files with the director either of the following:

- (A) The written consent of such other corporation or holder of a reserved or registered name to use the same or substantially identical name and one or more words are added to make the name distinguishable from the other name, or
- (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to use the name in this State.”

SECTION 9. Section 415A-18, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Within ninety days after the involuntary dissolution of a professional corporation under this section, the corporation may be reinstated by the director upon a written application executed by any two officers of the corporation setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary dissolution, and the filing of all reports due and unfiled. Within the ninety-day period, should the name of the professional corporation, or a name substantially identical thereto be registered or reserved by another corporation [or], partnership, or limited liability company, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily dissolved professional corporation pursuant to the amendment provisions of this chapter.”

SECTION 10. Section 415B-7, Hawaii Revised Statutes, is amended to read as follows:

**“§415B-7 Corporate name.** The corporate name shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, limited liability company, or trade name existing or registered under the laws of this State or any foreign corporation [or], partnership, or limited liability company authorized to transact business, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time reserved in the manner provided under the laws of this State, or the name of a corporation which has in effect a registration of its corporate name as provided under the laws of this State, except that this provision shall not apply if the applicant delivers to the director for filing either of the following:

- (1) The written consent of the other corporation or holder of a reserved or registered name to use the same or substantially identical name and one or more words are added to make the name distinguishable from the other name, or
- (2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State.”

SECTION 11. Section 415B-98, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Within ninety days after the involuntary dissolution of a corporation under this section, the corporation may be reinstated by the director upon written application executed by any two officers of the corporation setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary dissolution, and the filing of all reports due and unfiled. Within the ninety-day period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, or limited liability company or such name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily dissolved corporation pursuant to the amendment provisions of this chapter.”

SECTION 12. Section 415B-122, Hawaii Revised Statutes, is amended to read as follows:

“**\$415B-122 Corporate name of foreign corporation.** No certificate of authority shall be issued to a foreign corporation unless its corporate name:

- (1) Is not the same as, or substantially identical to, the name of any profit or nonprofit corporation [or], partnership, or limited liability company existing under the laws of this State, or any profit or nonprofit foreign corporation [or], foreign partnership, or foreign limited liability company authorized to transact business or conduct affairs in this State, or a corporate or trade name, trademark, or service mark reserved or registered pursuant to the laws of this State; and
- (2) Is transliterated into letters of the English alphabet, if the name is not in English.”

SECTION 13. Section 425-6, Hawaii Revised Statutes, is amended to read as follows:

“**\$425-6 Partnership name.** No statement or certificate of any partnership having a name substantially identical with the name of any corporation [or], partnership, or limited liability company registered to do business under the laws of the State or with any trade name, service mark, or trademark previously registered shall be recorded by the director. The acceptance of a statement or certificate of a partnership for registration by the director shall not abrogate or limit any common law or other right of any person to any corporation [or], partnership, or limited liability company name, trade name [or], trademark[.], or service mark.

The director may make, amend, and repeal such rules as may be necessary to carry out the purposes of this section.”

SECTION 14. Section 425D-102, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The name of each limited partnership as set forth in its certificate of limited partnership:

- (1) May not contain the name of a limited partner unless:
  - (A) It is also the name of a general partner or the corporate name of a corporate general partner, or



- (B) The business of the limited partnership had been carried on under that name before the admission of that limited partner;
- (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation [or], partnership, or limited liability company existing under the laws of this State, any foreign corporation [or], partnership or, limited liability company authorized to transact business in this State, any trade name, trademark, or service mark previously registered in this State, or a name the exclusive right to which is, at the time, reserved, or the name of a partnership which has in effect a registration of its partnership name as provided in this chapter, except that this provision shall not apply if the applicant filed with the director either of the following:
  - (A) The written consent of the other partnership or holder of a reserved or registered name to use the same or substantially identical name, and one or more words may be added to make the name distinguishable from the other name, or
  - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State.”

SECTION 15. Section 425D-203.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within ninety days after the involuntary cancellation of a limited partnership under this section, the limited partnership may be reinstated by the director upon written application executed by any general partner of the limited partnership setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary cancellation, and the filing of all statements due and unfilled. Within the ninety-day period, should the name of the limited partnership, or a name substantially identical thereto, be registered or reserved by another corporation [or], partnership, or limited liability company, or should such name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily canceled limited partnership pursuant to the amendment provisions of this chapter.”

SECTION 16. Section 425D-904, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No registration for a foreign limited partnership shall be accepted by the director if the name of such foreign limited partnership:

- (1) Is the same as, or substantially identical to, the name of any domestic or foreign corporation [or], partnership[,] whether general or limited, [domestic or foreign,] or limited liability company, previously authorized or registered to do business under the laws of the State, or with any trade name, service mark, or trademark previously registered under the laws of the State, or a name the exclusive right to which is, at the time, reserved, except that this provision shall not apply if the foreign limited partnership applying for registration files with the director any one of the following:
  - (A) The written consent of the holder of the registered or reserved name to use the same or substantially identical name and one or more words are added to make the name distinguishable from the other name; or

- (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign limited partnership to the use of the name in this State; and
- (2) Is not transliterated into letters of the English alphabet, if the name is not in English."

SECTION 17. Section 482-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) It shall be unlawful for any person to adopt or use a print, label, trademark, service mark, or trade name which is identical to or confusingly similar with any registered print, label, trademark, service mark, or trade name, or the name of any partnership [or], corporation, or limited liability company registered in accordance with the laws on partnerships [or domestic or foreign], corporations[.], or limited liability companies."

SECTION 18. Section 487-14, Hawaii Revised Statutes, is amended to read as follows:

"**§487-14 Restitution.** (a) In any action brought by the director of the office of consumer protection, the court may include in its orders or judgments such provisions as may be necessary to effect restitution. Any person in whose favor restitution is ordered need not accept restitution, but the person's acceptance and full performance of restitution shall bar recovery by the person of any other damages in any action on account of the same acts or practices against the person making restitution.

(b) Whenever a corporation is ordered to pay restitution under subsection (a), the court hearing the action may include in its orders or judgments that the corporation and the individual directors, officers, or agents of the corporation who authorized, ordered, or had done, or participated in any of the unlawful acts and practices which caused, in whole or in part, injuries to any person, are jointly and severally liable for the payment of restitution.

(c) Whenever a domestic or foreign limited liability company is ordered to pay restitution under subsection (a), the court hearing the action may include in its orders or judgments that the limited liability company and the individual members, managers, or agents of the limited liability company who authorized, ordered, had done, or participated in any of the unlawful acts and practices that caused, in whole or in part, injuries to any person, are jointly and severally liable for the payment of restitution.

[(c)] (d) The office of consumer protection may establish and maintain an account for purposes of holding and disbursing moneys received or recovered by it and which are due consumers as restitution.

[(d)] (e) The director of the office of consumer protection may assign to a consumer for collection that portion of any judgment awarding restitution to that consumer."

SECTION 19. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1 or so much thereof as may be necessary for fiscal year 1996-1997 to carry out the purposes this Act, including the hiring of necessary staff. The sum appropriated shall be expended by the department of commerce and consumer affairs.

SECTION 20. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>3</sup>

SECTION 21. This Act shall take effect on April 1, 1997; provided that section 19 shall take effect on July 1, 1996.

(Approved June 7, 1996.)

Notes

1. "425D-" substituted for "25D-".
2. Prior to amendment "of" appeared here.
3. Edited pursuant to HRS §23G-16.5.

ACT 93

S.B. NO. 1720

A Bill for an Act Relating to Business Registration.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 425, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART LIMITED LIABILITY PARTNERSHIP ACT**

**§425-A Name of part.** This part may be cited as the Hawaii Limited Liability Partnership Act.

**§425-B Definitions.** As used in this part:

"Director" means the director of commerce and consumer affairs.

"Foreign limited liability partnership" means a partnership formed in accordance with the laws of any other jurisdiction as a limited liability partnership under the laws of that jurisdiction and registered as a foreign limited liability partnership pursuant to this part.

"Limited liability partnership" means a partnership formed in accordance with the laws of this State and registered as a limited liability partnership pursuant to this part.

**§425-C Certificate of limited liability partnership.** (a) In order to form a limited liability partnership, a certificate of limited liability partnership must be executed and delivered to the office of the director for filing. The certificate shall set forth:

- (1) The name of the limited liability partnership;
- (2) The street address of the principal place of business of the partnership;
- (3) The name and the residence street address of each partner;
- (4) The nature of the partnership business;
- (5) The fact that the partnership is a limited liability partnership; and
- (6) The fact that none of the partners are either a minor or an incompetent person.

(b) A limited liability partnership is formed at the time of the filing of the certificate of limited liability partnership in the office of the director.

**§425-D Amendment to certificate.** (a) A certificate of limited liability partnership is amended by delivering a certificate of amendment of limited liability partnership to the office of the director for filing. The certificate of amendment shall set forth:

- (1) The name of the limited liability partnership;
- (2) The date of filing the certificate; and

(3) The amendment to the certificate.

(b) A partner who becomes aware that any statement in a certificate of limited liability partnership was false when made or that arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall amend the certificate within thirty days after the partner becomes aware of the inaccuracy.

(c) A certificate of limited liability partnership may be amended at any time for any other proper purpose that the partners determine. No person shall have any liability because an amendment to a certificate of limited liability partnership has not been filed to reflect the occurrence of any event as required by subsection (b).

(d) A restated certificate of limited liability partnership may be executed and filed in the same manner as a certificate of amendment. The restated certificate shall set forth all of the operative provisions of the certificate as amended.

**§425-E Registration of foreign limited liability partnership.** Before transacting business in this State, a foreign limited liability partnership shall register with the director. To register, a foreign limited liability partnership shall submit to the director an application for registration as a foreign limited liability partnership, certified and signed by a partner and setting forth:

- (1) The name of the foreign limited liability partnership;
- (2) The name and residence address of each partner residing in Hawaii;
- (3) The nature of the foreign limited liability partnership business;
- (4) The jurisdiction in which it was formed and the street address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited liability partnership;
- (5) The date of its formation and the date the partnership commenced business in the State;
- (6) The name and address of any qualified agent for service of process on the foreign limited liability partnership whom the foreign limited liability partnership elects to appoint; provided that the agent shall be an individual resident of this State or a domestic corporation;
- (7) The fact that the partnership is a foreign limited liability partnership; and
- (8) The fact that none of the partners are either a minor or an incompetent person.

Registration is effective at the time of the filing of the application for registration of the foreign limited liability partnership in the office of the director.

**§425-F Changes and amendments.** If any statement in the application was false when made or any arrangement of other facts described have changed, making the application inaccurate in any material respect, other than by admission or withdrawal of partners, the foreign limited liability partnership shall file, within thirty days after it becomes aware of the inaccuracy, in the office of the director a certificate, certified and signed by a partner, correcting the statement.

**§425-G Annual statement.** Every limited liability partnership and foreign limited liability partnership registered in this State shall file an annual statement on or before March 31 of each year as of December 31 of the preceding year, containing the following:

- (1) The name of the limited liability partnership or foreign limited liability partnership;
- (2) In the case of a foreign limited liability partnership, the name and residence address of each partner resident in Hawaii or in the case of a

limited liability partnership, the name and residence address of each partner;

- (3) The nature of the partnership business;
- (4) The street address of the principal place of business of the partnership in this State and, if the partnership is a foreign limited liability partnership, the name of the jurisdiction where the foreign limited liability partnership was formed and the street address of the principal place of business of the partnership;
- (5) In the case of a foreign limited liability partnership, the name and street address of the qualified agent for service of process on the foreign limited liability partnership whom the foreign limited liability partnership elects to appoint; provided that the agent shall be an individual resident of this State or a domestic corporation;
- (6) The fact that the partnership is a limited liability partnership or foreign limited liability partnership; and
- (7) The fact that none of the partners are either a minor or an incompetent person.

**§425-H Execution of statements.** (a)<sup>1</sup> Each statement required by this part to be filed in the office of the director shall be executed and certified in the following manner:

- (1) The initial certificate of limited liability partnership of a limited liability partnership must be signed by all partners;
- (2) The initial application for registration of a foreign limited liability partnership must be signed by at least one partner;
- (3) A certificate of correction or certificate of amendment must be signed by at least one partner; and
- (4) Any other statement or document must be signed by at least one partner.

**§425-I Filing requirements; filing duty of the director.** (a) A document must satisfy the requirements of this part to be entitled to filing by the director.

(b) The document shall contain the information required by this part. It may contain other information as well.

(c) If the director has prescribed a mandatory form for the document, the document must be in or on the prescribed form.

(d) The director's duty to file documents under this chapter is ministerial. The filing or refusal to file a document does not:

- (1) Affect the validity or invalidity of the document in whole or part;
- (2) Relate to the correctness or incorrectness of information contained in the document; or
- (3) Create a presumption that the documentation is valid or invalid, or the information contained in the document is correct or incorrect.

**§425-J Forms to be furnished by director.** The registration, annual statement, and other statements required by this part shall be filed on forms to be furnished by the director.

**§425-K Laws of this State to apply.** The internal affairs of a limited liability partnership including the liability of partners for debts, obligations, and liabilities of or chargeable to the partnership, shall be subject to and governed by the laws of this State, regardless of where the limited liability partnership may do business.

**§425-L Foreign limited liability partnerships, powers and liabilities.** (a)

A foreign limited liability partnership, on filing an application for registration as required by section 425-E and subject to continuing compliance with the other provisions of this part, shall have the same powers and privileges, and be subject to the same disabilities as are by law conferred upon limited liability partnerships; provided that the purposes for which the partnership is formed are not repugnant to or in conflict with any law of the State.

(b) Subject to the Constitution of this State, the laws of the state in which a foreign limited liability partnership is formed govern its organization and internal affairs and the individual liability of its partners.

**§425-M Minors and incompetent persons.** A minor or incompetent person may not be a partner, but may have a beneficial interest in a limited liability partnership or foreign limited liability partnership through a trustee or duly appointed guardian.

**§425-N Name.** (a) The name of a limited liability partnership as set forth in its certificate of limited liability partnership, shall contain the words "limited liability partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of its name.

(b) No certificate of a limited liability partnership or registration for a foreign limited liability partnership shall be accepted by the director if the name of the partnership:

- (1) Is the same as, or substantially identical to, the name of any corporation or partnership, whether general, limited, limited liability, domestic, or foreign, previously authorized or registered to do business under the laws of the State, or with any trade name, service mark, or trademark previously registered under the laws of the State, or a name the exclusive right to which is, at the time, reserved, except that this provision shall not apply if the partnership applying for registration files with the director any one of the following:

- (A) The written consent of the holder of the registered or reserved name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or
- (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign limited liability partnership to use the name in this State; and

- (2) In the case of a foreign limited liability partnership, is not transliterated into letters of the English alphabet, if the name is not in English.

(c) If a foreign limited liability partnership is unable to change its name to a name which is available to it under the laws of this State, it may deliver to the director a copy of a certificate of registration of trade name for the foreign limited liability partnership's file and thereafter become registered to transact business in the State under that name.

(d) Subject to chapter 91, the director may make, amend, and repeal such rules as may be necessary to carry out the purposes of this section.

**§425-O Reservation of partnership name.** The exclusive right to the use of a partnership name may be reserved by any:

- (1) Person intending to organize a limited liability partnership;
- (2) Limited liability partnership intending to change its name;

- (3) Foreign limited liability partnership intending to do or carry on any business in the State or to take, hold, sell, demise, or convey real estate or other property therein;
- (4) Foreign limited liability partnership authorized to do or carry on any business in the State or to take, hold, sell, demise, or convey real estate or other property therein and intending to change its name; or
- (5) Person intending to organize a foreign limited liability partnership and intending to have the partnership to do or carry on any business in the state or to take, hold, sell, demise, or convey real estate or other property therein.

Reservations shall be made by filing with the director an application in such form as the director shall prescribe to reserve a specified partnership name, and payment to the director of a fee equivalent to that paid by a corporation for the same service. If the director finds that the name is available for partnership use, the director shall reserve the name for the exclusive use of the applicant for a period of one-hundred-twenty days.

The right to the exclusive use of a specified partnership name so reserved may be transferred by filing in the office of the director a notice of a transfer executed by the applicant for whom the name is reserved specifying the name and address of the transferee.

**§425-P Statement of dissolution.** Whenever a limited liability partnership is dissolved, and the business is not continued within the meaning of section 425-141(1), (3), (5), or (6), a statement thereof showing the cause of dissolution shall be filed in the office of the director within thirty days after dissolution. The statement shall be certified by all partners except in cases in which circumstances make it impossible to secure the signature of all partners, which circumstances shall be set forth in the statement.

**§425-Q Prior liens on limited liability partnership property on dissolution.** Upon dissolution of a limited liability partnership, any lawful taxes, imposts, license fees, or assessments for which the partnership, or any partner in respect thereof, is liable shall constitute a prior lien upon the assets of the partnership but not as against the interest of those creditors who have prior recorded liens.

**§425-R Record of statements.** The director shall cause books or files to be kept in the director's office, in which shall be recorded the information required by this part to be filed in the director's office; and these books or files shall be open to public inspection.

**§425-S Fee for recording.** (a) The director shall collect the following fees for documents filed under this part:

- (1) For each change of partnership name or statement of dissolution filed, a fee of \$5 per partner, subject to a maximum fee of \$5,000;
- (2) For each annual statement filed, a fee of \$50;
- (3) For each limited liability partnership registered, a fee of \$100 for each partner, subject to a maximum fee of \$10,000;
- (4) For each foreign limited liability partnership registered, a fee of \$1,000 if the partnership has fewer than ten partners; \$5,000 if the partnership has ten or more but fewer than fifty partners; and \$10,000 if the partnership has fifty or more partners;
- (5) For each reservation or transfer of limited liability partnership name, a fee of \$100;

- (6) For each certificate of correction or certificate of amendment, a fee of \$100;
- (7) For each certificate of good standing, a fee of \$100; and
- (8) For any other certificate, statement, or document, a fee of \$100;
- (9) For each certification of domestic or foreign partnership, a fee of \$100.
- (b) The following special handling fees shall be assessed by the director for expeditious review of the following documents:
  - (1) For limited liability partnerships: certificate of limited liability partnership, \$100; certificate of correction, \$100; change of name statement, \$100; partnership dissolution statement, \$100; annual statement, \$100; certification of limited liability partnership, \$1 a page; certificate of good standing, \$100;
  - (2) For foreign limited liability partnerships: registration statement, \$100; certificate of correction, \$100; withdrawal application, \$100; annual statement, \$100; certification of foreign partnership, \$1 a page; certificate of good standing, \$100; and
  - (3) For any other certificate or document authorized by this part, \$100.

All special handling fees shall be credited to the special fund authorized by section 415-128. All other fees collected under this section shall be managed in accordance with section 26-9(1).

**§425-T Personal liability and penalty.** (a) If a partnership neglects or fails to substantially comply with any provision of this part, each partner shall severally forfeit to the State \$25 for each and every month while the default shall continue, to be recovered by action brought in the name of the State by the director; provided that the director, for good cause shown, may reduce or waive the same.

(b) Any person who signs or certifies as correct any statement or certificate filed pursuant to this part, or who presents any statement or certificate for filing, knowing that the statement or certificate is false in any material respect and with the intent to deceive or defraud, shall be guilty of a class C felony.

(c) Any person who negligently, but without intent to deceive or defraud, signs or certifies as correct any statement or certificate filed pursuant to this part, which is in fact false, may be punished by a civil fine not to exceed \$500.

**§425-U Cancellation of registration.** If any limited liability partnership or foreign limited liability partnership fails or neglects for a period of two years to file any annual statement as required by this part, the director may cancel the registration of the partnership. The cancellation of the registration shall not relieve the partners of liability for the penalties due to the State for the failure to file any statement or certificates required by this part.

**§425-V Withdrawal procedure for foreign limited liability partnership.** (a) Any foreign limited liability partnership that has registered under section 425-E to transact business in this State may withdraw and surrender its right to engage in business within this State by securing from the director a certificate of withdrawal. Any such partnership shall file in the office of the director an application for withdrawal, certified and signed by a partner, that shall set forth:

- (1) The name of the foreign limited liability partnership, and the jurisdiction in which, or in accordance with the laws of which, it is formed;
- (2) That the foreign limited liability partnership is not transacting business in this State;
- (3) That the foreign limited liability partnership surrenders its authority to transact business in this State;



- (4) That the foreign limited liability partnership revokes the authority of its registered agent in this State to accept service of process, and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the partnership was authorized to transact business in this State may thereafter be made on the partnership by service thereof on the director;
- (5) The name and resident address of each partner resident in Hawaii;
- (6) The dates that notice of the foreign limited liability partnership's intent to withdraw from the State was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State. The foreign limited liability partnership, with the approval of the director, may omit the publication of the notice if the partnership has insufficient assets to pay for the publication;
- (7) That all taxes, debts, obligations, and liabilities of the foreign limited liability partnership in the State have been paid and discharged or that adequate provision has been made therefor;
- (8) A mailing address to which the director may mail a copy of any process against the foreign limited liability partnership that may be served on the director; and
- (9) Additional information as may be necessary or appropriate to enable the director to determine and assess any unpaid fees payable by the foreign limited liability partnership.

(b) Upon the filing and the approval by the director of the application under subsection (a), and after the payment of a fee of \$100, the director shall issue to the partnership a certificate stating that it has withdrawn and surrendered its rights to engage in business within this State. No partnership may withdraw from this State without complying with the conditions of this section and until compliance, service of legal notices and processes may be made on any agent of the partnership within the State. If none can be found within the State, and in case the partnership, if a foreign limited liability partnership, has not filed with the director pursuant to section 425-E, the name of a person upon whom legal notice and process from the courts of the State may be served, and likewise if the person so named is not found within the State, service may be made upon the partnership by registered or certified mail, return receipt requested, addressed to a partner of the partnership at its principal office. Service using registered or certified mail is perfected at the earliest of:

- (1) The date the partnership receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the partnership; or
- (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) Nothing in this section shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a partnership in any other manner permitted by law.

**§425-W Transaction of business without registration.** (a) A foreign limited liability partnership transacting business in this State may not maintain any action, suit, or proceeding in any court of this State until it has registered in this State.

(b) The failure of a foreign limited liability partnership to register in this State does not impair the validity of any contract or act of the foreign limited liability partnership or prevent the foreign limited liability partnership from defending any action, suit, or proceeding in any court of this State.

(c) A partner in a foreign limited liability partnership is not individually liable for debts, obligations, or liabilities of or chargeable to the partnership solely by reason of the limited liability partnership having transacted business in this State without registration.

(d) Notwithstanding the foregoing provisions of this section, if a foreign or domestic corporation, limited partnership, general partnership, or limited liability company registered to transact business in this State changes its legal form to a foreign limited liability partnership, it must register under section 425-E within thirty days of becoming a foreign limited liability partnership, and may maintain any previously commenced actions, suits, and proceedings in courts of this State pending the filing of its application for registration under section 425-E.

**§425-X Action by director.** The director may bring an action to restrain a foreign limited liability partnership from transacting business in this State in violation of this chapter.

**§425-Y Limitation on partner's liability.** (a) Notwithstanding any provision in part IV, a partner or former partner in a limited liability partnership shall not be individually and personally liable for debts, obligations, and liabilities of or chargeable to the partnership, whether in contract, tort, or otherwise arising out of negligence, including negligent acts and negligent omissions; wrongful acts or omissions; misconduct; or malpractice committed while the partnership is a limited liability partnership and in the course of the partnership business, unless the negligence, wrongful acts or omissions, misconduct, or malpractice were committed by the partner or by a person or persons under the partner's direct supervision and control.

(b) Notwithstanding any provision in part IV, a partner or former partner in a limited liability partnership shall not be directly or indirectly, including by way of contribution, indemnification, assessment, or otherwise, liable for, or obligated to pay to the partnership, any partner thereof, or any other person, any debt, obligation, liability, or loss of or chargeable to the partnership whether arising in tort, contract, or otherwise if, by operation of subsection (a), the partner or former partner is not individually and personally liable for the debt, obligation, liability, or loss.

**§425-Z Errors in registration.** The status of a limited liability partnership or a foreign limited liability partnership as such shall not be affected by:

- (1) Errors in the registration or annual statement required by sections 425-C, 425-E, and 425-G; or
- (2) Changes which occur after a registration or annual statement is filed pursuant to sections 425-C, 425-E, and 425-G.

**§425-AA Corrections to filed documents.** (a) A limited liability partnership or foreign limited liability partnership may correct a document filed by the director if the document:

- (1) Contains an incorrect statement; or
  - (2) Was defectively executed, attested, sealed, verified, or acknowledged.
- (b) A document is corrected:
- (1) By preparing a certificate of correction that:
    - (A) Describes the document including its file date or attaches a copy of it to the certificate;
    - (B) Specifies the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and
    - (C) Corrects the incorrect statement or defective execution; and
  - (2) By delivering the certificate to the director for filing.

(c) A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, a certificate of correction is effective when filed.

**§425-BB Insurance and financial responsibility of registered limited liability partnerships.** (a) At the time of registration pursuant to section 425-C in the case of a limited liability partnership, and section 425-E, in the case of a foreign limited liability partnership, and at all times during which those partnerships shall transact intrastate business, every limited liability partnership and foreign limited liability partnership, as the case may be, shall be required to provide security for claims of the type described in section 425-Y, or based upon acts, errors, or omissions, a limited liability partnership or foreign limited liability partnership shall comply with one, or pursuant to subsection (b) some combination, of the following:

- (1) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount of at least \$100,000 multiplied by the number of licensed persons rendering professional services on behalf of the partnership, or at least \$100,000 multiplied by the number of partners in the case of a nonprofessional limited liability partnership; however, the maximum amount of insurance is not required to exceed \$5,000,000 against which no claims are outstanding.
- (2) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least \$100,000 multiplied by the number of licensed persons rendering professional services, or at least \$100,000 multiplied by the number of partners in the case of a nonprofessional limited liability partnership; however, the maximum amount of security is not required to exceed \$5,000,000 against which no claims are outstanding.
- (3) A limited liability partnership or foreign limited liability partnership may satisfy the requirements of this section by confirming that, as of the last day of its most recently completed fiscal year, it had a net worth equal to or exceeding \$10,000,000. In order to comply with this alternative method of meeting the requirements established in this section, a limited liability partnership or foreign limited liability partnership shall file an annual confirmation with the director, signed by an authorized member of the limited liability partnership or foreign limited liability partnership, accompanied by such forms as prescribed by the director. In order to be current in a given year, the partnership form of confirming compliance with this optional security requirement shall be on file within four months of the completion of the fiscal year and, upon being filed, shall constitute full compliance with the financial security requirements for purposes of this section as of the beginning of the fiscal year. A confirmation filed during any particular fiscal year shall continue to be effective for the first four months of the next succeeding fiscal year.

(b) For purposes of satisfying the security requirements of this section, a limited liability partnership or foreign limited liability partnership may aggregate the security provided by it pursuant to subsection (a)(1), (2), and (3). Any limited liability partnership or foreign limited liability partnership intending to comply with the alternative security provisions set forth in subsection (a)(3) shall file all informa-

tion that may be required by the director on such forms and in such manner as the director may prescribe.

(c) For purposes of subsection (a) a limited liability partnership is a professional partnership if it is engaged in the delivery of professional services under chapters 442, 448, 453, 455, 458, 459, 460, 461, 463E, 466, and 471.

(d) Neither the existence of the requirements of subsection (a) nor the extent of the limited liability partnership's or foreign limited liability partnership's compliance with the alternative requirements in this section shall be admissible in court or in any way be made known to a jury or other trier of fact in determining an issue of liability for, or to the extent of, the damages in question.

(e) Notwithstanding any other provision of this section, if a limited liability partnership is otherwise in compliance with the terms of this section at the time that a bankruptcy or other insolvency proceeding is commenced with respect to the limited liability partnership, it shall be deemed to be in compliance with this section during the pendency of the proceeding. A limited liability partnership that has been the subject of such a proceeding and that conducts business after the proceeding ends shall thereafter comply with subsection (a), in order to obtain the limitations on liability afforded by this chapter.

(f) If a partnership falsely represents in its certificate or amended certificate of limited liability, or in its registration or amended registration as a foreign limited liability partnership, that it has obtained the minimum amount of insurance required by this section, all partners of the limited liability partnership or foreign limited liability partnership shall be liable jointly for all of the debts and liabilities of the partnership.

(g) The director is not responsible for determining if a partnership is in compliance with the requirements of this section.

**§425-CC Revocation if instrument dishonored.** The director may revoke the filing of a document filed under this part if the director determines that the filing fee for the document was paid by an instrument that was dishonored when presented by the State for payment. The director shall return the document and give notice of revocation to the filing party by regular mail. Failure to give or receive notice does not invalidate the revocation. A revocation of a filing does not affect an earlier filing.

**§425-DD Partnerships for the practice of law; disallowed.** The formation of limited liability partnerships or the registration of foreign limited liability partnerships for the practice of law shall not be allowed under this part."

SECTION 2. Section 466-3, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"“Partner” means a partner in any general partnership, foreign general partnership, limited liability partnership, or foreign limited liability partnership.

“Partnership” means any general partnership, foreign general partnership, limited liability partnership, or foreign limited liability partnership.”

SECTION 3. Section 425-106, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) But any association formed under any other statute of this State, or any statute adopted by authority, other than the authority of this State, is not a partnership under this part, unless such association would have been a partnership in this State prior to the adoption of this part; but this part shall apply to limited partnerships, limited liability partnerships, and subject to section 425-L, foreign limited

liability partnership, except insofar as the statutes relating to such partnerships are inconsistent herewith.”

SECTION 4. In codifying the new part added to chapter 425, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the designation of the new sections in this Act.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect April 1, 1997.

(Approved June 7, 1996.)

**Note**

1. No (b) designation.

**ACT 94**

H.B. NO. 1042

A Bill for an Act Relating to Employment.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 386, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§386- Proceedings to determine employment and coverage.** The director of labor and industrial relations shall have original jurisdiction over all controversies and disputes over employment and coverage under this chapter. Except in cases where services are specifically and expressly excluded from “employment” under section 386-1, it shall be presumed that coverage applies unless the party seeking exclusion is able to establish under both the control test and the relative nature of the work test that coverage is not appropriate under this chapter. There shall be a right of appeal from decisions of the director to the appellate board and thence to the supreme court.”

SECTION 2. Chapter 392, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§392- Proceedings to determine employment and coverage.** The director of labor and industrial relations shall have original jurisdiction over all controversies and disputes over employment and coverage under this chapter. Except in cases where services are specifically and expressly excluded from “employment” under section 392-5, it shall be presumed that coverage applies unless the party seeking exclusion is able to establish under both the control test and the relative nature of the work test that coverage is not appropriate under this chapter. There shall be a right of appeal from decisions of the director to the circuit court and thence to the supreme court.”

SECTION 3. Section 386-1, Hawaii Revised Statutes, is amended by amending the definition of “employment” to read as follows:

““Employment” means any service performed by an individual for another person under any contract of hire or apprenticeship, express or implied, oral or

written, whether lawfully or unlawfully entered into. It includes service of public officials, whether elected or under any appointment or contract of hire express or implied.

“Employment” does not include the following service:

- (1) Service for a religious, charitable, educational, or nonprofit organization if performed in a voluntary or unpaid capacity;
- (2) Service for a religious, charitable, educational, or nonprofit organization if performed by a recipient of aid therefrom and the service is incidental to or in return for the aid received;
- (3) Service for a school, college, university, college club, fraternity, or sorority if performed by a student who is enrolled and regularly attending classes and in return for board, lodging, or tuition furnished, in whole or in part;
- (4) Service performed by a duly ordained, commissioned, or licensed minister, priest, or rabbi of a church in the exercise of the minister’s, priest’s, or rabbi’s ministry or by a member of a religious order in the exercise of nonsecular duties required by the order;
- (5) Service performed by an individual for another person solely for personal, family, or household purposes if the cash remuneration received is less than \$225 during the current calendar quarter and during each completed calendar quarter of the preceding twelve month period;
- (6) Domestic, which includes attendant care, and day care services authorized by the department of human services under the Social Security Act, as amended, performed by an individual in the employ of a recipient of social service payments;
- (7) Service performed without wages for a corporation without employees by a corporate officer in which the officer is at least a twenty-five per cent stockholder; [and]
- (8) Service performed by an individual for a corporation if the individual owns at least fifty per cent of the corporation; provided that no employer shall require an employee to incorporate as a condition of employment[.]; and
- (9) Service performed by an individual for another person as a real estate salesperson or as a real estate broker, if all the service performed by the individual for the other person is performed for remuneration solely by way of commission.

As used in this paragraph “religious, charitable, educational, or nonprofit organization” means a corporation, unincorporated association, community chest, fund, or foundation organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.”

SECTION 4. Section 392-5, Hawaii Revised Statutes, is amended to read as follows:

**“§392-5 Excluded services.** “Employment” as defined in section 392-3 does not include the following service:

- (1) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, performed in any calendar quarter by an individual if the cash remuneration paid by the employer for such service is less than \$225;
- (2) Service not in the course of the employer’s trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an

individual who is regularly employed by the employer to perform the service. An individual shall be deemed to be regularly employed to perform service not in the course of the employer's trade or business during a calendar quarter only if (A) on each of some twenty-four days during the quarter the individual performs the service for some portion of the day, or (B) the individual was regularly employed (as determined under subparagraph (A)) by the employer in the performance of the service during the preceding calendar quarter;

- (3) Service performed on or in connection with a vessel not an American vessel, if the individual performing the service is employed on and in connection with the vessel when outside the United States;
- (4) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed as an ordinary incident thereto, except (A) the service performed in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States), and (B) the service performed in connection with a vessel of ten net tons or less (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States) by an individual who is employed by an employer who, for some portion in each of twenty different calendar weeks in either the current or preceding calendar year, had in the employer's employ one or more persons performing the service, whether or not the weeks were consecutive and whether or not the same individuals performed the service in each week, and (C) service performed in connection with the catching or taking of salmon or halibut for commercial purposes;
- (5) Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of the child's father or mother;
- (6) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter;
- (7) Service performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more such states or political subdivisions; and any service performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to such service, exempt from the tax imposed by section 3301 of the Internal Revenue Code of [1954;] 1986;
- (8) Service with respect to which temporary disability compensation is payable for sickness under a temporary disability insurance system established by an act of Congress;
- (9) Service performed in any calendar quarter in the employ of any non-profit organization exempt from income tax under section 501 of the Internal Revenue Code of [1954,] 1986, if (A) the remuneration for such service is less than \$50, or (B) the service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university, or (C) the service is performed by a duly ordained, commissioned, or licensed minister or licensed minister of a church in the exercise of the minister's ministry or by a member of a

- religious order in the exercise of nonsecular duties required by the order, or (D) the service is performed for a church by an employee who fails to meet the eligibility requirements of section 392-25;
- (10) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents, if (A) no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual, and (B) eighty-five per cent or more of its income consists of amounts collected from members and amounts contributed by the employer of the members for the sole purpose of making such payments and meeting expenses;
  - (11) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents or their designated beneficiaries, if (A) admission to membership in the association is limited to individuals who are officers or employees of the United States government, and (B) no part of the net earnings of the association inures (other than through such payments) to the benefit of any private shareholder or individual;
  - (12) Service performed in the employ of a school, college, or university, not exempt from income tax under section 501 of the Internal Revenue Code of [1954,] 1986, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university;
  - (13) Service performed in the employ of any instrumentality wholly owned by a foreign government, if: (A) the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and (B) the United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;
  - (14) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to state law;
  - (15) Service performed by an individual for an employer as an insurance agent or as an insurance solicitor, if all such service performed by the individual for the employer is performed for remuneration solely by way of commission;
  - (16) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;
  - (17) Service covered by an arrangement between the department and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employer during the period covered by the employer's duly approved election, are deemed to be performed entirely within the agency's state;



- (18) Service performed by an individual who, pursuant to the Federal Economic Opportunity Act of 1964, is not subject to the federal laws relating to unemployment compensation;
- (19) Domestic, which includes attendant care, and day care services authorized by the department of human services under the Social Security Act, as amended, performed by an individual in the employ of a recipient of social service payments; [or]
- (20) Service performed by a vacuum cleaner salesman<sup>1</sup> for an employing unit, if all such services performed by the individual for such employing unit are performed for remuneration solely by way of commission[.]; or
- (21) Service performed by an individual for an employer as a real estate salesperson or as a real estate broker, if all the service performed by the individual for the employer is performed for remuneration solely by way of commission.<sup>2</sup>

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 6. This Act shall take effect upon its approval.

(Approved June 7, 1996.)

#### Notes

- 1. Prior to amendment "salesperson" appeared here.
- 2. Edited pursuant to HRS §23G-16.5.

## ACT 95

S.B. NO. 2866

A Bill for an Act Relating to the Transfer of Land to the Department of Hawaiian Home Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to authorize the transfer of certain parcels of land from the housing finance and development corporation's developments known as the Villages of Kapolei on Oahu, and the Villages of Laiopua in Kealahou, Hawaii, to the department of Hawaiian home lands to satisfy the requirement of section 6(1) of Act 14, Special Session Laws of Hawaii 1995.

SECTION 2. All present title-holders of the lands of the public land trust, as defined in section 10-2, Hawaii Revised Statutes, and sugarcane lands referred to in article XII, section 1 of the constitution of the State of Hawaii, covering proposed development of housing projects known as the Villages of Laiopua (TMK: (3)-7-4-8:17 (portion) (Village 3)) in Kealahou, Hawaii, and the Villages of Kapolei (TMK: 9-1-16:61, 62, 65, 66, 67, and 68) on Oahu under section 10-13.6, Hawaii Revised Statutes, shall, as grantors, within one year of the effective date of this Act, execute instruments of conveyance as may be necessary and proper to the department of Hawaiian home lands in trust, as grantee, to convey full title to these lands and improvements in fee simple, in consideration of which the department of Hawaiian home lands shall pay just compensation to the grantors at fair market value.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

ACT 96

H.B. NO. 404

A Bill for an Act Relating to Liquor License Fees.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 281-17.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Any liquor commission which currently receives a license fee from a licensee in excess of the amount prescribed by this section shall immediately revise its liquor license fee structure to conform with the requirements of this section. [Effective July 2, 1988, any excess] Any funds in excess of twenty per cent of the commission’s current budget shall be returned or credited annually to existing licensees.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

ACT 97

H.B. NO. 1741

A Bill for an Act Relating to Aviation Artifacts.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that Hawaii has the third highest number of aviation crash sites in the United States. The high number of crash sites is indicative of the intensity of aviation training that took place in the islands during World War II. These sites often include invaluable aviation artifacts such as actual aircraft, aircraft parts, military equipment, books, documents, and other artifacts.

The purpose of this Act is to protect the integrity and historical value of aviation artifacts in Hawaii.

SECTION 2. Chapter 6E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§6E- Consultation. The department shall consult with appropriate organizations on all matters relating to aviation artifacts.”

SECTION 3. Section 6E-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Aviation artifact” means airplanes, fallen aircraft, crash sites, or any objects or materials associated with the history of aerospace in Hawaii which are

over fifty years old, or determined to be of exceptional historic significance by the department. This term includes but is not limited to actual aircraft, aircraft parts, military equipment, books, documents, and other related items.”

SECTION 4. Section 6E-3, Hawaii Revised Statutes, is amended to read as follows:

**“§6E-3 Historic preservation program.** There is established within the department a division to administer a comprehensive historic preservation program, which shall include, but not be limited to, the following:

- (1) Development of an on-going program of historical, architectural, and archaeological research and development, including surveys, excavations, scientific recording, interpretation, and publications on the State’s historical and cultural resources;
- (2) Acquisition of historic or cultural properties, real or personal, in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange, or other means; preservation, restoration, administration, or transference of the property; and the charging of reasonable admissions to that property;
- (3) Development of a statewide survey and inventory to identify and document historic properties, aviation artifacts, and burial sites, including all those owned by the State and the counties;
- (4) Preparation of information for the Hawaii register of historic places and listing on the national register of historic places;
- (5) Preparation, review, and revisions of a state historic preservation plan, including budget requirements and land use recommendations;
- (6) Application for and receipt of gifts, grants, technical assistance, and other funding from public and private sources for the purposes of this chapter;
- (7) Provision of technical and financial assistance to the counties and public and private agencies involved in historic preservation activities;
- (8) Coordination of activities of the counties in accordance with the state plan for historic preservation;
- (9) Stimulation of public interest in historic preservation, including the development and implementation of interpretive programs for historic properties listed on or eligible for the Hawaii register of historic places;
- (10) Coordination of the evaluation and management of burial sites as provided in section 6E-43;
- (11) Acquisition of burial sites in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange, or other means, to be held in trust;
- (12) Submittal of an annual report to the governor and legislature detailing the accomplishments of the year and recommendations for changes in the state plan or future programs relating to historic preservation;
- (13) Regulation of archaeological activities throughout the State;
- (14) Employment of sufficient professional and technical staff for the purposes of this chapter without regard to chapters 76 and 77;
- (15) Adoption of rules in accordance with chapter 91, necessary to carry out the purposes of this chapter; and
- (16) Development and adoption, in consultation with the Office of Hawaiian Affairs native historic preservation council, of rules governing permits for access by native Hawaiians and Hawaiians to cultural, historic, and pre-contact sites and monuments.”

SECTION 5. Section 6E-6, Hawaii Revised Statutes, is amended to read as follows:

**“[[§6E-6]] Depositories for certain specimens and objects.** The department shall serve as or shall determine the depository for all field notes, photographs, negatives, maps, artifacts, or other materials generated or recovered through historic preservation projects supported in whole or in part by the State or taking place on state lands.

Any aviation artifact or any specimen and object of natural and of botanical, ethnological, architectural, historical, or archaeological value or interest, and any book, treatise, or pamphlet relating thereto in the possession of the University of Hawaii, or any other state agency or its political subdivisions, if and when the same is no longer needed for scientific investigation, for study, or for any other purpose, [may] at the request of the Bishop Museum or other qualified museums in this State, shall be transferred and delivered by and with the consent of such department, bureau, or board having possession thereof, to the Bishop Museum or other qualified museum, or exchanged with such museum, and whereupon, the title shall become vested in such museum and shall be held by them; provided that the aviation artifacts or any specimens and objects so transferred are made available at all reasonable times by the museum for study and examination by the officials of the university of such department, bureau, or board and to qualified scholars.”

SECTION 6. Section 6E-7, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The State shall not transfer any historic property or aviation artifact under its jurisdiction without the concurrence of the department, and shall not transfer any burial site under its jurisdiction without consulting the appropriate island burial council.”

SECTION 7. Section 6E-8, Hawaii Revised Statutes, is amended to read as follows:

**“§6E-8 Review of effect of proposed state projects.** (a) Before any agency or officer of the State or its political subdivisions commences any project which may affect historic property, aviation artifact, or a burial site, the agency or officer shall advise the department and allow the department an opportunity for review of the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, especially those listed on the Hawaii register of historic places. The proposed project shall not be commenced, or in the event it has already begun, continued, until the department shall have given its written concurrence.

The department is to provide written concurrence or non-concurrence within ninety days after the filing of a request with the department. The agency or officer seeking to proceed with the project, or any person, may appeal the department's concurrence or non-concurrence to the Hawaii historic places review board. An agency, officer, or other person who is dissatisfied with the decision of the review board may apply to the governor who may request the Hawaii advisory council on historic preservation to report or who may take action as the governor deems best in overruling or sustaining the department.”

SECTION 8. Section 6E-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It shall be unlawful for any person, natural or corporate, to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon the private lands of any owner thereof without the owner’s written permission being first obtained. It shall be unlawful for any person, natural or corporate, to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department.”

SECTION 9. Section 6E-12, Hawaii Revised Statutes, is amended to read as follows:

**“§6E-12 Reproductions, forgeries, and illegal sales.** (a) It shall be unlawful to reproduce, retouch, rework, or forge any historic object and to represent it or offer it for trade or sale as an original and genuine object. It shall be unlawful for any person to offer for sale or exchange any historic object with the knowledge that it has been collected or excavated in violation of any of the terms of this chapter.

(b) It shall be unlawful for any person to:

- (1) Offer for sale or exchange any exhumed prehistoric or historic human skeletal remains or associated burial goods; or
- (2) Remove those goods or remains, except those remains fabricated into artifacts prehistorically, from the jurisdiction of the State without obtaining a permit from the department.

(c) It shall be unlawful for any person to remove aviation artifacts derived from state lands or agencies from the jurisdiction of the State without obtaining a permit from the department.

[(c)] (d) Any person violating this section shall be fined no more than \$10,000. Each object or part of a prehistoric or historic human skeleton or associated burial good offered for sale or trade or removed from the jurisdiction in violation of this section shall constitute a distinct and separate offense for which the offender may be punished.”

SECTION 10. Section 6E-42, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Before any agency or officer of the State or its political subdivisions approves any project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, aviation artifacts, or a burial site, the agency or office shall advise the department and prior to any approval allow the department an opportunity for review and comment on the effect of the proposed project on historic properties, aviation artifacts, or burial sites, consistent with section 6E-43, including those listed in the Hawaii register of historic places.”

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 12. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Pupil Transportation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-181, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The department of transportation may grant exemptions for the use of vehicles other than school vehicles when the department finds that compliance with this section is impossible or impractical due to factors, such as the unavailability of school vehicles, which are beyond the control of the school[.]; provided that no exemption shall be granted for the qualifications of individuals driving a bus as defined in section 286-2 and such individuals shall meet school vehicle driver qualifications. The exemptions shall be granted:

- (1) To the department of education, to administer to public schools based on criteria developed by the departments of transportation and education, provided that the department of education shall submit a report to the department of transportation at the end of each school year on the extent to which these exemptions were utilized;
- (2) To a board of independent schools, which is registered with the department of commerce and consumer affairs, to administer to private schools utilizing criteria developed by the departments of transportation and education, provided that the board shall submit a report to the department of transportation at the end of each school year on the extent to which these exemptions were utilized;
- (3) Only for the transport of pupils to and from school functions or school-related activities but not for transportation to and from a school;
- (4) Only when each pupil being transported has obtained a written statement from the pupil's parent or legal guardian waiving the State's liability; and
- (5) In accordance with the procedures and criteria established by rules of the department of transportation.

(c) The department of transportation may grant exemptions for the use of vehicles other than school vehicles for the transportation of students requiring special education and services when the department finds that compliance with this section is impossible or impractical[.]; provided that no exemption shall be granted for the qualifications of individuals driving a bus as defined in section 286-2 and such individuals shall meet school vehicle driver qualifications.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 1996.

(Approved June 12, 1996.)

## ACT 99

H.B. NO. 2359

A Bill for an Act Relating to Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Property Insurance Association (HPIA) was established in 1991 to assure stability in the property insurance market, assure availability of basic property insurance, and spread the risk of insuring high risk property to all members of the HPIA.

Any insurance company that is authorized to transact property or casualty insurance in Hawaii, and is not engaged only in writing motor vehicle insurance, becomes a member of the HPIA. The HPIA is governed by a board of directors whose responsibilities include control over the organization, management, policies, and activities of the HPIA.

Under existing law, the board of directors of the HPIA is composed of twelve members: nine voting members selected by HPIA members, one voting member appointed by the insurance commissioner to represent insurance agents, and two voting members appointed by the insurance commissioner to represent the general public.

The legislature finds that a more equitable distribution of representation on the HPIA's board of directors is needed to ensure that all affected parties have a voice and vote in handling property insurance matters.

The purpose of this Act is to restructure the membership of the board of directors of the HPIA as follows: eight voting members selected by the member insurers, one voting member appointed by the insurance commissioner to represent insurance agents, and three voting members appointed by the insurance commissioner to represent the general public.

SECTION 2. Section 431:21-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The board of directors shall have responsibility and control over the organization, management, policies, and activities of the association. The board of directors of the association shall consist of twelve persons serving terms as established in the plan of operation. The board shall be composed of:

- (1) ~~[Nine]~~ Eight voting members selected by the member insurers;
- (2) One voting member appointed by the commissioner to represent insurance agents; and
- (3) ~~[Two]~~ Three voting members appointed by the commissioner to represent the public.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

ACT 100

H.B. NO. 2384

A Bill for an Act Relating to Instruction Permits.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-110, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The examiner of drivers shall[, within ten days of the filing of the application,] examine every applicant for an instruction permit. The examination shall include tests of the applicant’s:

- (1) Eyesight and other physical or mental capabilities to determine if the applicant is capable of operating a motor vehicle;
- (2) Understanding of highway signs regulating, warning, and directing traffic; and
- (3) Knowledge of the traffic laws, ordinances, or regulations of the State and the county where the applicant resides or intends to operate a motor vehicle.

(c) If the examiner of drivers is satisfied that the applicant is qualified to receive an instruction permit, the examiner of drivers shall issue the permit entitling the applicant, while having the permit in the applicant’s immediate possession, to drive a motor vehicle upon the highways for a period of [ninety] one-hundred-eighty days; provided that an applicant who is registered in a driver training course shall be issued a temporary instruction permit for the duration of the course and the termination date of the course shall be entered on the permit.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

ACT 101

H.B. NO. 2411

A Bill for an Act Relating to Liquor.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 281-78, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) At no time under any circumstances shall any licensee or its employee:

- (1) Sell, serve, or furnish any liquor to[:], or allow the consumption of any liquor by:
  - (A) Any minor[:];
  - (B) Any person at the time under the influence of liquor[:];
  - (C) Any person known to the licensee to be addicted to the excessive use of intoxicating liquor[:]; or
  - (D) Any person for consumption in any vehicle [which] that is licensed to travel on public highways;



provided that the consumption or sale of liquor to a minor shall not be deemed to be a violation of this subsection if, in making the sale or allowing the consumption of any liquor by a minor, the licensee was misled by the appearance of the minor and the attending circumstances into honestly believing that [such] the minor was of legal age and the licensee acted in good faith[.]; and provided further that it shall be incumbent upon the licensee to prove that the licensee so acted in good faith;

- (2) Permit any liquor to be consumed on the premises of the licensee or on any premises connected therewith, whether there purchased or not, except as permitted by the terms of its license;
- (3) Permit any liquor to be sold or served by any person eighteen to twenty years of age except in licensed establishments where selling or serving the intoxicating liquor is part of the minor's employment, and where there is proper supervision of [such] these minor employees to ensure that the minors shall not consume the intoxicating liquor;
- (4) Permit any liquor to be sold or served by any person below the age of eighteen years upon any licensed premises, except in [such] individually specified licensed establishments found to be otherwise suitable by the liquor commission in which an approved program of job training and employment for dining room waiters and waitresses is being conducted in cooperation with the University of Hawaii, the state community college system, or a federally sponsored [manpower] personnel development and training program, under arrangements [which] that ensure proper control and supervision of employees;
- (5) Knowingly permit any person under the influence of liquor or disorderly person to be or remain in or on the licensed premises;
- (6) Fail immediately to prevent or suppress any violent, quarrelsome, disorderly, lewd, immoral, or unlawful conduct of any person on the premises;
- (7) Sell any draught beer unless upon the faucet, spigot, or outlet wherefrom the beer is drawn there is attached a clear and legible notice, placard, or marker which [shall] in the English language [indicate and declare] indicates and declares the name or brand adopted by the manufacturer of the draught beer, so situated as to be clearly legible for a distance of at least ten feet from the spigot, faucet, or outlet, to a purchaser with normal vision;
- (8) Receive from a person, as payment or as a consideration for liquor, any personal or household goods, including clothing and food, or any implements of trade. Any person violating this paragraph shall be guilty of a misdemeanor and upon conviction shall be punished as provided [for] in section 281-102."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

ACT 102

H.B. NO. 2433

A Bill for an Act Relating to Motor Carriers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 105, Session Laws of Hawaii 1995, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect upon its approval and shall be repealed [one year from its effective date. Sections 269-1, 271-4, and 271-27, Hawaii Revised Statutes are reenacted in the form in which they read on the day before the approval of this Act.] on June 8, 1998; provided that upon the repeal of this Act:

- (1) The definition of “enforcement officer” in section 269-1, Hawaii Revised Statutes, is reenacted in the form in which it read on June 7, 1995;
- (2) Section 271-4, Hawaii Revised Statutes, is reenacted in the form in which it read on June 7, 1995; and
- (3) Section 271-27(g) and (j), Hawaii Revised Statutes, is reenacted in the form in which it read on June 7, 1995, as amended by section 1 of Act 101, Session Laws of Hawaii 1995.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 7, 1996.

(Approved June 12, 1996.)

ACT 103

H.B. NO. 2598

A Bill for an Act Relating to Qualifications for Examination and Licensure to Practice Medicine and Surgery.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 453-4, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Except as otherwise provided by law, no person shall be licensed to practice medicine or surgery unless the applicant has passed an examination and has been found to be possessed of the necessary qualifications. No applicant shall be eligible for the examination sooner than the first year of residency; provided that if the applicant is a graduate of a foreign medical school, the applicant shall be eligible no sooner than the second year of residency.

(b) Before any applicant shall be eligible for [the examination,] licensure, the applicant shall furnish proof satisfactory to the board that:

- (1) The applicant is of demonstrated competence and professional knowledge;
- (2) (A) The applicant is a graduate of a medical school or college whose program leading to the M.D. degree is accredited by the Liaison Committee on Medical Education, and has served a residency of

at least one year in a program which has been accredited for the training of resident physicians by the Accreditation Council for Graduate Medical Education, or if outside the United States, in a program which is shown by the applicant to the satisfaction of the board to possess standards substantially the equivalent of those required for [such] accreditation by the Accreditation Council for Graduate Medical Education; or

(B) The applicant is a graduate of a foreign medical school and has had at least two years of residency in a program accredited by the Accreditation Council for Graduate Medical Education, and:

- (i) Holds the national certificate of the Educational Commission for Foreign Medical Graduates, or its successor; or
- (ii) Holds the certificate of the Fifth Pathway Program of the American Medical Association;

provided that for a period of two years after June 26, 1990, the requirements of subsection (b)(2)(B)(i) and (ii) shall not [be applicable] apply to any applicant who has had four years of residency in a program accredited by the Accreditation Council for Graduate Medical Education.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 104

H.B. NO. 2729

A Bill for an Act Relating to Forfeiture.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to implement the recommendations of the auditor’s 1995 sunset evaluation of the Hawaii Omnibus Criminal Forfeiture Act, chapter 712A, Hawaii Revised Statutes. That Act, which provides for the seizure and forfeiture of certain property associated with specified offenses, and for the distribution of the property or its proceeds to state and county law enforcement agencies, is scheduled to be repealed on July 1, 1996, pursuant to Act 196, Session Laws of Hawaii 1993, section 1.

The auditor concluded that the public interest does not require repeal of the criminal forfeiture act. Although the department of the attorney general had properly implemented that law, the auditor found that the law should be amended in the interest of fairness by adopting certain provisions of the Uniform Controlled Substances Act (1994), issued by the National Conference of Commissioners on Uniform State Laws. The auditor therefore recommended making some changes to chapter 712A, including the following:

- (1) Require the government in civil judicial forfeiture cases—whether in judicial in rem proceedings, judicial in personam proceedings, or in administrative forfeiture cases removed to the courts at the request of the property claimant—to initially prove by a preponderance of the evidence that the property is subject to forfeiture; and

- (2) Require the courts to limit the scope of a forfeiture to the extent that they find the effect of the forfeiture grossly disproportionate to the nature and severity of the crime.

This Act implements these recommendations by the auditor.

Furthermore, the legislature finds that drug abuse is a growing concern in society and that education, prevention, and rehabilitation programs play a major role in reducing the number of substance abusers in the State. As such, one of the purposes of this Act is to allocate twenty per cent of all moneys deposited in the criminal forfeiture fund to programs designed to educate and dissuade individuals from experimenting with illegal drugs and to rehabilitate those who have already fallen prey to the lure of these illicit drugs.

SECTION 2. Chapter 712A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§712A- Excessive forfeitures.** The court shall limit the scope of a forfeiture judgment issued pursuant to section 712A-5(b) to the extent the court finds the effect of the forfeiture is grossly disproportionate to the nature and severity of the owner’s conduct. In determining whether a forfeiture is grossly disproportionate, the court may consider:

- (1) The degree to which the property was used to facilitate the conduct that subjects property to forfeiture and the importance of the property to the conduct;
- (2) The gain received or expected by an owner from the conduct that subjects property to forfeiture and the value of the property subject to forfeiture;
- (3) The nature and extent of the owner’s culpability; and
- (4) The owner’s effort to prevent the conduct or assist in prosecution.”

SECTION 3. Section 712A-10, Hawaii Revised Statutes, is amended to read as follows:

**“§712A-10 Administrative forfeiture.** The prosecuting attorney may initiate administrative forfeiture of property other than real property, the estimated value of which is less than \$100,000, or of any vehicle or conveyance, regardless of value. Administrative forfeiture shall be processed in the following manner:

- (1) The prosecuting attorney shall file a petition with the attorney general, pursuant to rules adopted by the attorney general.
- (2) The prosecuting attorney shall give notice of pending forfeiture by making reasonable efforts to serve a copy of the petition in a manner provided in section 712A-8(a) or 712A-8(b) on all persons known to have an interest in the property, together with instructions for filing a claim and cost or in pauperis bond, or a petition for remission or mitigation.
- (3) The attorney general shall give notice of intention to forfeit the property administratively by publication in the manner provided in section 712A-8(c). Notice by publication shall include:
  - (a) A description of the property;
  - (b) The estimated value of the property;
  - (c) The date and place of the seizure;
  - (d) The offense for which the property is subject to forfeiture;
  - (e) Instructions for filing a claim and cost or in pauperis bond, or a petition for remission or mitigation; and

- (f) Notice that the property will be forfeited to the State if a claim and cost or in pauperis bond or petition for remission or mitigation is not filed in substantial compliance with this section.
- (4) Persons claiming an interest in the property may file either a petition for remission or mitigation of forfeiture, or a claim and cost or in pauperis bond, but not both, with the attorney general, within thirty days of notice by publication or receipt of written notice, whichever is earlier. Notwithstanding section 1-29, the thirty-day time period prescribed herein is computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or holiday and then it is also excluded, and the thirty-day time period runs until the end of the next day which is not a Saturday, Sunday, or a holiday. "Holiday" includes any day designated as a holiday pursuant to section 8-1.
- (5) Any person claiming seized property may seek remission or mitigation of the forfeiture by timely filing a petition with the attorney general. A petition for remission or mitigation shall not be used to challenge the sufficiency of the evidence to support the forfeiture or the actions of any government official but shall presume a valid forfeiture and ask the attorney general to invoke the executive power to pardon the property, in whole or in part. The petition shall be signed by the petitioner and sworn on oath before a notary public and shall contain the following:
  - (a) A reasonably complete description of the property;
  - (b) A statement of the interest of the petitioner in the property, as owner or interest-holder which may be supported by bills of sale, contracts, or mortgages, or other documentary evidence; and
  - (c) Facts and circumstances sufficient to show whether the petitioner:
    - (i) Owns or holds an interest in the seized property as defined by section 712A-1;
    - (ii) Had any knowledge that the property was or would be involved in any violation of the law;
    - (iii) Had any knowledge of the particular violation which subjected the property to seizure and forfeiture;
    - (iv) Had any knowledge that the user of the property had any record, including arrests, except when the person was acquitted or the charges dismissed due to lack of evidence, for the violation which subjected the property to seizure and forfeiture or for any crime which is similar in nature.

Any subsequent pleadings or written communications alleging matters pertaining to paragraph [(5)](b) or (c) of this section must also be signed by the petitioner and sworn on oath before a notary public.

- (6) If the attorney general, with sole discretion, determines that remission is not warranted, the attorney general may discretionarily mitigate the forfeiture where the petitioner has not met the minimum requirements for remission but where there are present other extenuating circumstances indicating that some relief should be granted to avoid extreme hardship. Mitigation may also be granted where the minimum requirements for remission have been met but the overall circumstances are such that the attorney general determines that complete relief is not warranted. Mitigation shall take the form of a money penalty imposed upon the petitioner which shall be deposited into the criminal forfeiture fund established under section 712A-16. Extenuating circumstances include:
  - (a) Language or culture barrier;

- (b) Humanitarian factors such as youth or extreme age;
  - (c) Presence of physical or mental disease, disorder, or defect;
  - (d) Limited or peripheral criminal culpability;
  - (e) Cooperation with the seizing agency or the prosecuting attorney; and
  - (f) Any contributory error on the part of government officials.
- (7) It shall be the duty of the attorney general to inquire into the facts and circumstances alleged in a petition for remission or mitigation of forfeiture. However, no petitioner is entitled to a hearing on the petition for remission or mitigation. Hearings, if any, shall be held at the discretion of the attorney general.
- (8) The attorney general shall provide the seizing agency and the petitioner a written decision on each petition for remission or mitigation within sixty days of receipt of the petition unless the circumstances of the case require additional time, in which case the attorney general shall notify the petitioner in writing and with specificity within the sixty-day period that the circumstances of the case require additional time and further notify the petitioner of the expected decision date.
- (9) Any person claiming seized property may seek judicial review of the seizure and proposed forfeiture by timely filing with the attorney general a claim and bond to the State in the amount of ten per cent of the estimated value of the property or in the sum of \$2,500, whichever is greater, with sureties to be approved by the attorney general, upon condition that if the claimant fails to prove that claimant's interest is exempt from forfeiture under section 712A-5, the claimant shall pay the State's costs and expenses, including reasonable attorneys fees incurred in connection with a judicial proceeding. In lieu of a cost bond, a claimant may file an in pauperis bond sworn on oath before a notary public. An in pauperis bond shall be in the form set out in the appendix to the rules of penal procedure. The claim shall be signed by the claimant and sworn on oath before a notary public and shall comply with the requirements of section 712A-12(5). Upon receipt of the claim and bond, the attorney general shall notify the prosecuting attorney who may discretionarily continue to seek forfeiture by petitioning the circuit court for forfeiture of the property within forty-five days of receipt of notice that a proper claim and bond has been filed. The prosecuting attorney may also elect to honor the claim in which case the prosecuting attorney shall notify the seizing agency and authorize the release of the seizure for forfeiture on the property [[or[]] on any specified interest in it.
- (10) If a judicial forfeiture proceeding is instituted subsequent to notice of administrative forfeiture[,] pursuant to paragraph (9), no duplicate or repetitive notice shall be required. The judicial proceeding, if any, shall adjudicate all timely filed claims. At the judicial proceeding, the claimant may testify, present evidence and witnesses on the claimant's behalf, and cross-examine witnesses who appear at the hearing. The State may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. The State has the initial burden of showing by a preponderance of the evidence that the claimant's interest in the property is subject to forfeiture. On such a showing by the State, the claimant has the burden of showing by a preponderance of the evidence that the claimant's interest in the property is not subject to forfeiture.

- (11) In the event a claim and bond has not been filed in substantial compliance with this section, or if the attorney general, with sole discretion, determines that remission or mitigation is not warranted, the attorney general shall order forfeited all property seized for forfeiture. In the event the attorney general, with sole discretion, determines that remission or mitigation is warranted, the attorney general shall notify the seizing agency and the prosecuting attorney and order the release of the seizure for forfeiture on the property or on any specified interest in it. There shall be no appeal from the attorney general's decision or order of forfeiture or remission or mitigation.
- (12) Administrative proceedings and the adoption of rules under this section are exempt from the requirements of chapter 91, the Hawaii administrative procedure act, and are adjudicatory functions for the purposes of applicable sections of the Hawaii Revised Statutes."

SECTION 4. Section 712A-12, Hawaii Revised Statutes, is amended by amending subsection (8) to read as follows:

"(8) The State has the initial burden of showing [the existence of probable cause for seizure of the property.] by a preponderance of the evidence that the claimant's interest in the property is subject to forfeiture. On such a showing by the State, the claimant has the burden of showing by a preponderance of the evidence that the claimant's interest in the property is not subject to forfeiture."

SECTION 5. Section 712A-13, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) If a forfeiture is authorized by law, it shall be ordered by a court on a petition for forfeiture filed by the prosecuting attorney in an in personam civil or criminal action. In any civil in personam action brought under this section, the owner or interest-holder may testify, present evidence and witnesses on the owner or interest-holder's behalf, and cross-examine witnesses who appear at the hearing. The State may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. The State has the initial burden of showing by a preponderance of the evidence that the owner or interest-holder's interest in the property is subject to forfeiture. On such a showing by the State, the owner or interest-holder has the burden of showing by a preponderance of the evidence that the owner or interest-holder's interest in the property is not subject to forfeiture."

SECTION 6. Act 260, Session Laws of Hawaii 1988, as amended by Act 197, Session Laws of Hawaii 1990, and Act 196, Session Laws of Hawaii 1993, is amended by amending section 7 to read as follows:

"SECTION 7. This Act shall take effect upon its approval[; provided that on July 1, 1996, this Act shall be repealed and sections 842-3, 329-55, and 701-119, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the approval of this Act; provided further that the repeal of this Act shall not affect the rights and duties that matured, penalties that were incurred, property seizures that have been initiated, and properties that have been forfeited pursuant to this Act, and such rights, duties, penalties, seizures, and forfeitures shall be determined and adjudicated in accordance with the provisions of this Act]."

## ACT 105

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 9. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 105

H.B. NO. 2957

A Bill for an Act Relating to Highway Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-152, Hawaii Revised Statutes, is amended to read as follows:

**“§286-152 Persons qualified to take blood specimen.** No person, other than a physician, registered nurse, phlebotomist deemed qualified by the director of a clinical laboratory that is licensed by the State, or person licensed in a clinical laboratory occupation under section 321-13, may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of a breath specimen.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 106

H.B. NO. 3101

A Bill for an Act Relating to Condominium Property Regimes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 514A-46, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-46 Investigatory powers.** If the commission has reason to believe that any person is violating or has violated [any provision set forth in sections] section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 [to], 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, or 514A-134, or the rules of the commission adopted pursuant thereto, the commission may conduct an investigation of the matter and examine the books, accounts, contracts, records, and files of the association[,] of apartment owners, the board of directors, the managing agent, the real estate broker, the real



estate salesperson, the purchaser, or the developer. For the purposes of this examination, the developer and the real estate broker shall keep and maintain records of all sales transactions and of the funds received by the developer and the real estate broker pursuant thereto, and [to] shall make [such] the records accessible to the commission upon reasonable notice and demand.”

SECTION 2. Section 514A-47, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-47 Cease and desist orders.** In addition to its authority under section 514A-48, whenever the commission has reason to believe that any person is violating or has violated [sections] section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 [to], 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, or 514A-134, or the rules of the commission adopted pursuant thereto, it shall issue and serve upon the person a complaint stating its charges in that respect and containing a notice of a hearing at a stated place and upon a day [and at a place therein fixed] at least thirty days after the service of the complaint. The person [so complained of] served has the right to appear at the place and time [so fixed] specified and show cause why an order should not be entered by the commission requiring the person to cease and desist from the violation of the law or the rules of the commission [adopted pursuant thereto,] charged in the complaint. If upon the hearing the commission is of the opinion that this chapter[,], or the rules of the commission [adopted pursuant thereto, has] have been or [is] are being violated, it shall make a report in writing [in which it shall state] stating its findings as to the facts and shall issue and cause to be served on the person an order requiring the person to cease and desist from the violations. The person [complained of], within thirty days after service upon the person of the report or order, may obtain a review thereof in the appropriate circuit court.”

SECTION 3. Section 514A-48, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-48 Power to enjoin.** Whenever the commission believes from satisfactory evidence that any person has violated [any of sections] section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 [to], 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-132, or 514A-134, or the rules of the commission adopted pursuant thereto, it may conduct an investigation on the matter and bring an action in the name of the people of the State in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging therein or doing any act or acts in furtherance thereof.”

SECTION 4. Section 514A-49, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-49 Penalties.** (a) Any person who [in any respect] violates or fails to comply with [any of the provisions set forth in sections] section 514A-2, 514A-31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 [to], 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, 514A-132, or 514A-134, is guilty of a misdemeanor and shall be punished by a fine not exceeding \$10,000 or by imprisonment for a term not exceeding one year, or both. Any person who [in any other respect] violates or fails, omits, or neglects to obey, observe, or comply with any rule, order, decision, demand, or requirement of the commission under [sections] section 514A-2, 514A-

31 to 514A-49, 514A-61 to 514A-63, 514A-65, 514A-67 [to], 514A-68, 514A-70, 514A-83.5, 514A-84, 514A-85, 514A-95, 514A-95.1, 514A-97, 514A-98, 514A-102 to 514A-106, 514A-132, or 514A-134 shall be punished by a fine not exceeding \$10,000.

(b) Any person who violates any provision of this chapter or the rules of the commission adopted pursuant thereto [also] shall also be subject to a civil penalty not exceeding \$10,000 for any violation. Each violation shall constitute a separate offense [and the collection of the fine shall be by suit brought by the attorney general on behalf of the commission].”

SECTION 5. Section 514A-84, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-84 Management and contracts; developer[.], managing agent, and association of apartment owners.** (a) If the developer or any affiliate of the developer acts as the first managing agent for the association of apartment owners following its organization, the contract shall not have a term exceeding one year and shall contain a provision that the contract may be terminated by either party thereto on not more than sixty days’ written notice. The identity of the managing agent as the developer or the developer’s affiliate shall be disclosed to the association of apartment owners no later than the first meeting of the association[.] of apartment owners, which is when the association of apartment owners is organized. An affiliate of, or person affiliated with, a developer is a person that directly or indirectly controls, is controlled by, or is under common control with, the developer.

(b) Any developer or affiliate of the developer or a managing agent, who manages the operation of the property from the date of recordation of the first apartment conveyance until the organization of the association of apartment owners, shall comply with the requirements of sections 514A-95.1, 514A-97, and 514A-132, with the exception of the fidelity bond requirement for the association of apartment owners.

(c) The developer, affiliate of the developer, managing agent, and the association of apartment owners shall ensure that there is a written contract for managing the operation of the property, expressing the agreements of all parties including but not limited to financial and accounting obligations, services provided, and any compensation arrangements, including any subsequent amendments. Copies of the executed contract and any amendments shall be provided to all parties to the contract. Prior to the organization of the association of apartment owners, any apartment owner may request to inspect as well as receive a copy of the management contract from the entity that manages the operation of the property.”

SECTION 6. Section 514A-95, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Every managing agent shall:

- (1) Be licensed as a real estate broker in compliance with chapter 467 and the rules of the commission or be a corporation authorized to do business under article 8 of chapter 412;
- (2) Register [annually] with the commission[.] prior to conducting managing agent activity through approval of a completed registration application, payment of fees, and submission of any other additional information set forth by the commission. Beginning December 31, 1996, the registration shall be for a biennial period with termination on December 31 of an even-numbered year. The commission shall prescribe a deadline date prior to the termination date for the submission of a completed

re-registration application, payment of fees, and any other additional information set forth by the commission. Any managing agent who has not met the submission requirements by the deadline date shall be considered a new applicant for registration and subject to initial registration requirements. The information required to be submitted [upon registration] with any application shall include but not be limited to [proof of] evidence of and information on fidelity bond coverage, name, business address, [and] phone number[;], and names of association of apartment owners managed;

- (3) Provide complete evidence [annually and at time of] with the initial registration application and re-registration application of a fidelity bond in an amount equal to \$500 multiplied by the aggregate number of [units covered by all of the managing agent's contracts;] apartments of the association of apartment owners managed by the managing agent; provided that the amount of the bond shall not be less than \$20,000 nor greater than \$100,000. The managing agent shall permit only employees covered by the fidelity bond to handle or have custody or control of any association of apartment owners funds, except any principals of the managing agent that cannot be covered by the fidelity bond. The bond shall protect the managing agent against the loss of any association [money,] of apartment owners' moneys, securities, or other [property] properties caused by the fraudulent or dishonest acts of employees of the managing agent. Failure to obtain or maintain a fidelity bond in compliance with this chapter and the rules adopted pursuant thereto, including failure to provide complete evidence of the fidelity bond coverage in a timely manner to the commission, shall result in non-registration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently maintained. A managing agent who is unable to obtain a fidelity bond may seek an exemption from the fidelity bond requirement from the commission. The commission shall adopt rules establishing the conditions and terms by which it may grant an exemption or a bond alternative, or permit deductibles;
- (4) Act promptly and diligently to recover from the bond, if the fraud or dishonesty of the managing agent's employees causes a loss to an association[,] of apartment owners, and apply the bond proceeds, if any, to reduce the [association's] association of apartment owners' loss. If more than one association of apartment owners suffers a loss, the managing agent shall divide the proceeds among the associations of apartment owners in proportion to each [association's] association of apartment owners' loss. An association of apartment owners may request a court order requiring the managing agent to act promptly and diligently to recover from the bond. If an association of apartment owners cannot recover its loss from the bond proceeds of the managing agent, the association of apartment owners may recover by court order from the real estate recovery fund established under section 467-16, provided that:
  - (A) The loss is caused by the fraud, misrepresentation, or deceit of the managing agent or its employees;
  - (B) The managing agent is a licensed real estate broker; and
  - (C) The association of apartment owners fulfills the requirements of sections 467-16 and 467-18 and any applicable rules of the commission; [and]

- (5) Pay [an] a nonrefundable application fee and, upon approval, an initial registration fee [for the first year], and subsequently pay [an annual] a reregistration fee, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91. A compliance resolution fee shall also be paid pursuant to section 26-9(o) and the rules adopted pursuant thereto[.]; and
  - (6) Report immediately in writing to the commission any changes to the information contained on the registration application, the evidence of the fidelity bond, or any other documents provided for registration. Failure to do so may result in termination of registration and subject the condominium project or the association of apartment owners to initial registration requirements.
- (b) The commission may [reject] deny any registration or re-registration application or terminate a registration without hearing if [bonding for which proof is shown fails] the fidelity bond and its evidence fail to meet the [statutory] requirements[.] of this chapter and the rules adopted pursuant thereto."

SECTION 7. Section 514A-95.1, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-95.1 Association of apartment owners registration; fidelity bond.** (a) Each condominium project or association of apartment owners having six or more [apartment units] apartments shall:

- (1) Secure [annually through its association of apartment owners] a fidelity bond in an amount equal to \$500 multiplied by the number of [units in the project,] apartments, to cover all officers, directors, employees, and managing agents of the association of apartment owners who handle, control, or have custody of the [association's] funds[.]; of the association of apartment owners; provided that the amount of the fidelity bond required by this subsection shall not be less than \$20,000 nor greater than \$100,000. The fidelity bond shall protect the association of apartment owners against fraudulent or dishonest acts by persons, including any managing agent [registered with the commission,] handling the [association's] funds[.] of the association of apartment owners. An association of apartment owners shall act promptly and diligently to recover from the fidelity bond required by this section [by order of the circuit or district court of the county where the violation occurred if the terms of the bond require a court order]. An association [which] of apartment owners that is unable to obtain a fidelity bond may seek approval for an exemption [from the fidelity bond requirement] or a bond alternative from the commission. The commission shall adopt rules establishing the conditions and terms for which it may grant an exemption or a bond alternative[.];, or permit deductibles. Failure to obtain or maintain a fidelity bond in compliance with this chapter and the rules adopted pursuant thereto, including failure to provide complete evidence of the fidelity bond coverage in a timely manner to the commission, shall result in non-registration or the automatic termination of the registration, unless an approved exemption or a bond alternative is presently maintained;
- (2) Register [annually through its association] with the commission [starting on January 1, 1990.] through approval of a completed registration application, payment of fees, and submission of any other additional information set forth by the commission. Beginning June 30, 1997, the registration shall be for a biennial period with termination on June 30 of

an odd-numbered year. The commission shall prescribe a deadline date prior to the termination date for the submission of a completed re-registration application, payment of fees, and any other additional information set forth by the commission. Any condominium project or association of apartment owners that has not met the submission requirements by the deadline date shall be considered a new applicant for registration and subject to initial registration requirements. Any new condominium project [coming into existence after January 1, 1990,] or association of apartment owners shall register [through its association] within thirty days of the [association's] association of apartment owners' first meeting. If the association of apartment owners has not held its first meeting and it is at least one year after the recordation of the purchase of the first apartment in the condominium project, the developer or developer's affiliate or the managing agent shall register on behalf of the unorganized association of apartment owners and shall comply with this section, except the fidelity requirement for association of apartment owners. The public information required to be submitted [upon registration] on any completed application form shall include but not be limited to [proof of] evidence of and information on fidelity bond coverage, names and positions of those persons who handle the [association's] association of apartment owners' funds, the name of the [association's] association of apartment owners' managing agent, if any, the postal address of the condominium, and the [name, business address,] names, addresses, and phone [number] numbers of [a designated] the officers of the association of apartment owners, of which one shall be designated as the public contact person for the association[;] of apartment owners;

- (3) Pay [an initial] a nonrefundable application fee and, upon approval, an initial registration fee [of \$25 for the first year from June 13, 1989,] and subsequently [an annual] pay a [reregistration] re-registration fee [as prescribed by], and the condominium management education fund fee, as provided in rules adopted by the director of commerce and consumer affairs[;] pursuant to chapter 91;
- (4) [Pay any registration fee on or before January 1 of each year. If an association fails to pay the registration fee by March 1 of each year, the association shall also pay, in addition to the registration fee, a penalty equal to the amount of the registration fee.] Register or re-register and pay the required fees by the due date. Failure to register or re-register or pay the required fees by the due date shall result in the assessment of a penalty equal to the amount of the registration or re-registration fee; and
- (5) Report immediately in writing to the commission any changes to the information contained on the registration or re-registration application, the evidence of the fidelity bond, or any other documents set forth by the commission. Failure to do so may result in termination of registration and subject the condominium project or the association of apartment owners to initial registration requirements.

(b) The commission may reject or terminate any registration submitted by a condominium project or an association [which] of apartment owners that fails to comply with this section. Any association [which] of apartment owners that fails to register as required by this section or whose registration is rejected or terminated shall not have standing to maintain any action or proceeding in the courts of this State until it registers. The failure of an association of apartment owners to register, or rejection or termination of its registration, shall not impair the validity of any

contract or act of the association of apartment owners nor prevent the association of apartment owners from defending any action or proceeding in any court in this State.”

SECTION 8. Section 514A-98, Hawaii Revised Statutes, is amended to read as follows:

“**§514A-98 False statement.** It shall be unlawful for any [association of apartment owners, its officers, its board of directors,] person or [its] person’s agents to testify before or file with the commission any notice, statement, application, or other document required under this chapter [which] that is false or untrue or contains any material misstatement of fact[. Any such false filing], or contains forgery. In addition to any sanctions or remedies as provided in this chapter, any violation of this section shall constitute a misdemeanor.”

SECTION 9. Section 514A-132, Hawaii Revised Statutes, is amended to read as follows:

“**[[§514A-132[]] Payments to the fund.** (a) Each condominium project or association of apartment owners with six or more apartments shall pay to the department of commerce and consumer affairs [a] the condominium management education fund fee [of \$2 for each apartment for calendar year 1990. Thereafter, the annual fee shall be] on or before June 30 of an odd-numbered year or within thirty days of the association of apartment owners’ first meeting or within one year after the recordation of the purchase of the first apartment, as prescribed by rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.

(b) The department of commerce and consumer affairs shall allocate the fees collected to the condominium management education fund established pursuant to section 514A-131.

(c) Payments of any fees required under this section shall be due on or before [January 1 of each year.] the registration due date and shall be nonrefundable. [If an association of apartment owners fails to pay a] Failure to pay the required fee by [March 1 of each year,] the due date, [the association] shall [be assessed] result in a penalty assessment of ten per cent of the amount due and the association of apartment owners shall not have standing to bring any action to collect or to foreclose any lien for common expenses or other assessments in any court of this State until the amount due, including any penalty, is paid. Failure of an association of apartment owners to pay a fee required under this section shall not impair the validity of any claim of the association of apartment owners for common expenses or other assessments, or prevent the association of apartment owners from defending any action in any court of this State.”

SECTION 10. Notwithstanding any other provision of law to the contrary, any fee imposed pursuant to section 6, 7, or 9 of this Act shall not exceed the existing fee amount required to be paid for the same purpose as of April 1, 1996; provided that for a biennial registration or re-registration, the re-registration fee, compliance resolution fund fee, and condominium management education fund fee shall not exceed twice the existing annual fee.

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 12. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

ACT 107

H.B. NO. 3241

A Bill for an Act Relating to Condominium Proxies.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 514A-83.2, Hawaii Revised Statutes, is amended to read as follows:

**“§514A-83.2 Proxies.** (a) A proxy, to be valid, must [be]:

- (1) Be delivered to the secretary of the association of apartment owners or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains[, and must contain];
- (2) Contain at least[:] the name of the association of apartment owners, the date of the meeting of the association of apartment owners, the printed name and signature of the person or persons giving the proxy, the apartment or apartments for which the proxy is given, [the printed name of the person or entity to whom the proxy is given,] and the date that the proxy is given[.]; and
- (3) Contain boxes wherein the owner has indicated that the proxy is given:
  - (A) For quorum purposes only;
  - (B) To the individual whose name is printed on a line next to this box;
  - (C) To the board of directors as a whole and that the vote be made on the basis of the preference of the majority of the board; or
  - (D) To those directors present at the meeting and the vote to be shared with each board member receiving an equal percentage.

(b) A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the apartment owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit.

[(c) All proxy forms, at the minimum, shall contain boxes wherein the owner may indicate that the owner wishes the proxy:

- (1) To be given for quorum purposes only;
- (2) To be given to a specific individual whose name is printed by the owner next to this box;
- (3) To be given to the board of directors as a whole and that the vote be made on the basis of the preference of the majority of the board; or
- (4) To be given to those directors present at the meeting and the vote to be shared with each board member receiving an equal percentage.

A proxy form which does not have a box marked shall be considered a proxy for quorum purposes only.

(d)] (c) No officer of a board of directors shall use association funds to solicit proxies; provided that this shall not prevent an officer from exercising the officer's right as an apartment owner under section 514A-82(b)(4).

[(e)] (d) Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering an apartment or under an agreement of sale affecting an apartment.”

## ACT 108

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 108

H.B. NO. 3274

A Bill for an Act Relating to Registration of New Motor Vehicles.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-42, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The director of finance may enter into a contract with new car dealerships and motor vehicle rental companies for the registration of new motor vehicles consistent with any statute, ordinance, or provision of any applicable collective bargaining agreement. The director of finance may adopt rules pursuant to chapter 91 as may be necessary for the application, bonding, and procedural requirements of such contractor.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 109

H.B. NO. 3293

A Bill for an Act Relating to Public Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 171, Hawaii Revised Statutes, seeks to assure the effective and efficient use of public lands for both public and approved private purposes, in order to promote the social, environmental, and economic well-being of Hawaii's people. Over the years, however, some maintain that certain provisions of this chapter no longer fully address the changing needs of the community. For example, some are concerned that lease rents have increased tremendously over the past few years, especially for agricultural leases, thereby creating added pressures on lessees. Others are concerned about inconsistencies in the manner in which lease rents are determined. There is also some overall concern that the provisions of this chapter have become too broad and open to wide interpretation.

The purpose of this Act is to direct the department of land and natural resources to conduct a comprehensive review of the provisions of chapter 171, Hawaii Revised Statutes, in order to address various problems faced by lessees of state lands.

SECTION 2. The department of land and natural resources shall conduct public hearings in each county of the State to determine the concerns and problems



faced by all lessees under chapter 171, Hawaii Revised Statutes. The department shall:

- (1) Submit a status report to the legislature no later than twenty days prior to the convening of the regular session of 1997, and a final report, including findings, recommendations, as well as proposed implementing legislation, to the legislature no later than twenty days prior to the convening of the regular session of 1998; and
- (2) Make appropriate amendments to administrative rules to address the problems and concerns identified.

The department may hire a consultant to assist in accomplishing the purposes of this Act.

SECTION 3. There is appropriated out of the special land and development fund the sum of \$150,000 or so much thereof as may be necessary, for fiscal year 1996-1997 to accomplish the purposes of this Act.

The sum appropriated shall be expended by the department of land and natural resources.

SECTION 4. This Act shall take effect upon its approval; provided that section 3 shall take effect on July 1, 1996.

(Approved June 12, 1996.)

## ACT 110

H.B. NO. 3333

A Bill for an Act Relating to Feed.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 144-10, Hawaii Revised Statutes, is amended to read as follows:

**“§144-10 Rules.** (a) The department may adopt [such] rules for feeds as are specifically authorized in this chapter and [such] other reasonable rules as may be necessary for the efficient enforcement of this chapter. In the interest of uniformity, the department shall by rule adopt, unless it determines that they are inconsistent with this chapter or are not appropriate to conditions which exist in this State, the following:

- (1) The official definitions of feed ingredients and official feed terms adopted by the Association of American Feed Control Officials and published in the official publication of that organization; and
- (2) Any regulation promulgated pursuant to the authority of the Federal Food, Drug, and Cosmetic Act, provided that the department shall have the authority under this chapter independently to adopt [such] these regulations.

(b) The department shall enforce this chapter and, subject to chapter 91, may adopt rules with respect to:

- (1) Providing for registration and inspection fees;
- (2) Providing for penalties for deficiencies of official samples and other violations of this chapter;
- (3) Determining responsibilities and procedures for payment of registration, inspection, and penalty fees;

- (4) Such other matters as may be necessary in order to [secure the efficient administration of] implement this chapter.

(c) Notwithstanding the foregoing provisions, the chairperson of the board of agriculture, for the purpose of enforcement of this chapter and without regard to the notice and public hearing requirements of chapter 91, may adopt rules for procedures, tolerance levels, and regulatory or action levels to determine if feed is adulterated, all federal regulations or guidelines of the United States established in 40 Code of Federal Regulations, parts 180 and 186; 21 Code of Federal Regulations, chapter 1, parts 1 to 1299; or the United States Food and Drug Administration Compliance Policy Guides, as they apply to feed, including changes made from time to time. Prior to the effective date of any such rules, the department shall publish in a newspaper of general circulation a notice that includes:

- (1) Either a statement of the substance of the proposed rule adoption, amendment, or repeal; or a general description of the subjects involved and the purposes to be achieved by the proposed rule adoption, amendment, or repeal; and
- (2) A statement that a copy of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed will be mailed to any interested person who requests a copy, together with a description of where and how the requests may be made.

The notice shall be mailed to all persons who have made a timely written request of the department for advance notice of these rules or of the department's rulemaking proceedings. The department may require reimbursement for the cost of preparing and mailing the copies."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 111

H.B. NO. 3336

A Bill for an Act Relating to Honey Bee Export Shipments.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§150A- Certificate for shipment.** The department may certify as to the pest condition of honey bee shipments when health certificates are officially required. Fees to cover the department's certification costs may be charged for health certificates as provided by rule. Health certificates shall not be altered or misused."

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 112

H.B. NO. 3337

A Bill for an Act Relating to the Nonpresentment of Warrants and Checks.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 40-68, Hawaii Revised Statutes, is amended to read as follows:

**“§40-68 Nonpresentment of warrants and checks.** Any warrant or check drawn upon the state treasury shall be presented at the treasury for payment before the close of the fiscal year next after the fiscal period in which it has been issued. All warrants or checks not so presented within that time shall be deemed to have been paid, and any money held at the expiration of that time in a special fund or account for the payment of the warrants or checks shall thereupon be transferred to a trust fund established and known as the nonpresentment of warrants and checks trust fund; provided that the fund balance in the trust fund shall not exceed \$500,000 and any excess of that amount shall be transferred to the general fund; provided further that within the period of [ten] four fiscal years immediately following the year in which an amount of money was so transferred to the trust fund, the payee or assignee of the warrant or check, or, if the payee is deceased, the personal representative of the estate of the payee, or if the estate of the payee is closed, to any person lawfully entitled to the undisposed property of the deceased payee, upon filing with the comptroller a claim for recovery and any supportive evidence required by the comptroller, shall be paid the amount of the warrant or check out of the trust fund upon a warrant or check newly drawn by the comptroller.”

SECTION 2. Act 221, Session Laws of Hawaii 1994, as amended by Act 60, Session Laws of Hawaii 1995, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect on July 1, 1994; provided that section 1 shall take effect on June 30, 1994[; and provided further that on July 1, 1996, section 1 of this Act shall be repealed and section 40-68, Hawaii Revised Statutes, shall be reenacted in the form in which it read on June 29, 1994].”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 30, 1996.

(Approved June 12, 1996.)

## ACT 113

H.B. NO. 3339

A Bill for an Act Relating to Public Works Project Assessments.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 107, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§107- Public works project assessment fund.** (a) There shall be established in the department of accounting and general services a revolving fund to be known as the public works project assessment fund for the purposes of defraying costs involved in carrying out construction projects managed by the department; managing funds representing accumulated vacation and sick leave credits and retirement benefits for non-general funded employees in the construction program in accordance with section 79-5; equitably collecting and distributing the costs of other current expenses associated with capital improvement, repairs and maintenance, and repairs and alterations projects; and managing the payments of employee transportation requirements such as car mileage reimbursements in accordance with applicable law and collective bargaining agreements.

(b) The comptroller shall make reasonable assessments on construction projects managed by the department of accounting and general services to carry out the program of centralized engineering services. The assessments shall be based on a logarithmic curve developed by the department for such services. All assessments collected shall be deposited into the public works project assessment fund.

(c) All expenditures from the public works project assessment fund shall be made by the comptroller in accordance with applicable law and rules.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 114

H.B. NO. 3344

A Bill for an Act Relating to the Relief of Certain Persons' Claims Against the State and Providing Appropriations Therefor.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The following sums of money are appropriated out of the general revenues of the State of Hawaii for the purpose of satisfying claims for legislative relief as to the following named persons, firms, corporations and entities, for claims against the State or its officers or employees for overpayment of taxes, or for refunds, reimbursements, payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

REFUND OF TAXES:

Amount

No cases

JUDGMENTS AGAINST THE STATE  
AND SETTLEMENTS OF CLAIMS:

Amount

Alcosiba v. Hawaii Community Correctional Center, et al. Civ. No. 91-2590-08, First Circuit	\$ 15,000.00 Settlement
Lonnie Baker v. SOH, et al. Civ. No. 92-2644-07, First Circuit	\$ 68,714.00 Settlement
Qun Bi v. Research Corporation of the University of Hawaii Civ. No. 93-0097-01, First Circuit	\$ 33,500.00 Settlement
Kimberly Brodbeck v. Louis Ron MacPhee, et al. Civ. No. 93-294K, Third Circuit	\$ 50,000.00 Settlement
Ching v. Kotis, et al. Civ. No. 93-2105-05, First Circuit	\$ 35,000.00 Settlement
Linda Cochran v. State of Hawaii, et al. Civ. No. 95-0268(1), Second Circuit Court	\$ 24,706.65 Judgment
Julia Coelho, et al. v. State of Hawaii, et al. Civ. No. 94-0841-03, First Circuit	\$ 160,000.00 Settlement
Elizabeth Collins v. DOE, et al. Civ. No. 93-4884-12, First Circuit Court	\$ 40,000.00 Settlement
John Curtis v. State of Hawaii, et al. Civ. No. 94-2986-08, First Circuit	\$ 30,000.00 Settlement
Edoki Hui 2, et al. v. State of Hawaii Civ. No. 93-0986-03, First Circuit	\$3,750,000.00 Settlement
Ferrera v. Dillingham Construction, et al. Civ. No. 93-2297-06, First Circuit Court	\$ 30,000.00 Settlement
Fuji Photo Films Hawaii, Inc. Case No. 3009, Tax Appeal Court	\$ 38,277.11 Judgment
John Gavelek v. Louis MacPhee, et al. Civ. No. 93-264K, Third Circuit	\$ 50,000.00 Settlement
Claim of Thomas Ginn	\$ 75,000.00
Michelle Gretzinger v. University of Hawaii Civ. No. 94-00684ACK, USDC	\$ 175,000.00 Settlement
The Aged Hawaiians v. Hawaiian Homes Commission et al., Civ. No. 89-244, Third Circuit	\$ 68,360.32 Judgment
Hirano v. Smythe Civ. No. 93-623, USDC	\$ 20,341.00 Settlement
Pegge Keawe, et al. v. Kainoa Sharp, et al. Civ. No. 94-576, Third Circuit Court	\$ 50,000.00 Settlement

Lopes v. Rogers, et al. Civ. No. 95-00200-DAE, USDC	\$ 47,500.00 Settlement
Lopes v. Rogers, et al. Civ. No. 93-0060-01, First Circuit	\$ 50,000.00 Settlement
Pepe Malepeai v. State of Hawaii, et al. Civ. No. 91-2876-08, First Circuit	\$ 875,000.00 Settlement
Anna-Leigh Marlowe v. State of Hawaii Civ. No. 92-179K, Third Circuit	\$ 950,000.00 Settlement
Robert Martin v. Carmelo Santiago-Lopez, et al. Civ. No. 95-00613HG, USDC	\$ 18,000.00 Settlement
Brandy McKeague v. State of Hawaii Civ. No. 94-672, USDC	\$ 15,000.00 Settlement
Dianna Niles v. State of Hawaii Civ. No. 94-1413-04	\$ 25,000.00 Settlement
Pieper v. City and County of Honolulu, et al. Civ. No. 94-4623-12, First Circuit	\$ 15,000.00 Settlement
Julie Ramos v. State of Hawaii, et al. Civ. No. 93-3667-09, First Circuit	\$ 175,000.00 Settlement
Matthew Recopuerto v. County of Maui, et al. Civ. No. 93-0943(1), Second Circuit	\$ 15,000.00 Settlement
James Roe v. William Oku, et al. Civ. No. 90-257-08, First Circuit Court	\$ 14,000.00 Settlement
Schileo v. State of Hawaii, et al. Civ. No. 93-1939-05, First Circuit	\$ 16,000.00 Settlement
State of Hawaii v. W.H. McVay, et al. Civ. No. 91-4097-12, First Circuit	\$ 500,000.00 Settlement
James Stuart v. State of Hawaii Civ. No. 93-3746-09, First Circuit	\$ 20,000.00 Settlement
Tagi Peato v. SOH Civ. No. 94-3516-09	\$ 43,097.70 Judgment
Takehara v. State of Hawaii, et al. Civ. No. 94-0753-02, First Circuit	\$ 66,320.48 Settlement
Edward Tamura, et al. v. Calvin Sylva, et al. Civ. No. 93-0843(3), Second Circuit	\$ 25,000.00 Settlement
Linda A. Wheeler v. Department of Education EEOC Charge No. 378-95-0111	\$ 25,000.00 Settlement
<b>MISCELLANEOUS CLAIMS:</b>	<b>Amount</b>
Dr. Rosario Fajardo	\$ 198.23
Helen H. Ikeno	\$ 323.87
Abraham Piianaia	\$ 516.56
Michael Ryan	\$ 1,593.60
Paul Zeigler and/or Janet Zeigler	\$ 1,166.00

SECTION 2. The sums hereinabove appropriated may be paid to the respective persons, or for the satisfaction or settlement of the respectively identified cases, and in the several amounts hereinabove set forth upon warrants or checks issued by the comptroller of the State: (1) upon vouchers approved by the director of taxation as to claims for refunds of taxes, and (2) upon vouchers approved by the attorney general as to all other claims.

SECTION 3. Notwithstanding the sums hereinabove appropriated as interest upon judgments against the State, payment of interest shall be limited to the period from the date of judgment, if applicable, to thirty days after the effective date of this Act, as provided in section 662-8, Hawaii Revised Statutes, for those cases to which that statute applies.

SECTION 4. All unexpended and unencumbered balances of the appropriations made by section 1 of this Act as of the close of business on June 30, 1997, shall lapse into the general fund of the State.

SECTION 5. If any provision of this Act, or the application thereof to any person or entity or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 115

H.B. NO. 3345

A Bill for an Act Relating to the Hawaii Education Council.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 311-2, Hawaii Revised Statutes, is amended to read as follows:

**“§311-2 State commissioners.** (a) Hawaii’s representatives to the Education Commission of the States, hereinafter called the “commission,” shall consist of seven members. The governor[,]; two members of the [state] legislature selected by its respective houses and serving in such manner as the legislature may determine; and the head of a state agency or institution, designated by the governor, having one or more programs of public education, shall be ex officio members of the commission. The other three members shall be appointed by and serve at the pleasure of the governor.

(b) The selection and terms of the members of the commission shall be governed by the applicable provisions of section 26-34.

(c) Members of the commission shall serve without pay but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of duties and responsibilities.”

SECTION 2. Section 311-6, Hawaii Revised Statutes, is amended to read as follows:

**“§311-6 Expenditures; reports.** [There is appropriated the sum of \$10,000 for carrying out the purposes of this chapter.] Expenditures by [the council] commission members shall be made upon warrants issued by the state comptroller based upon vouchers approved by the governor or the governor’s duly authorized representative. A report of the activities and expenses of the commission [and council] members and a proposed program for the State’s continuing participation in the activities of the compact for education, including a budget request, shall be submitted by the [council] governor to the [next and to each succeeding regular session of the] legislature.”

SECTION 3. Section 311-3, Hawaii Revised Statutes, is repealed.

SECTION 4. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 1996.

(Approved June 12, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 116**

H.B. NO. 3349

A Bill for an Act Relating to the Dissemination of Criminal History Record Information.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to authorize the dissemination of disposition information, as public record, for cases adjudicated under chapter 704, Hawaii Revised Statutes, which are maintained in the offender-based transaction statistics/computerized criminal history (OBTS/CCH) system. Chapter 704 governs court proceedings relating to an individual’s responsibility and fitness as a result of a physical or mental disease, disorder, or defect.

In cases involving the judgment of acquittal by reason of insanity, the court acquits the person on the grounds that while the person may have committed the alleged act, the person was lacking substantial capacity either to appreciate the wrongfulness of the person’s conduct or to conform to the requirements of the law as a result of a physical or mental disease, disorder, or defect.

The Hawaii criminal justice data center has surveyed all fifty states to gather information on their respective dissemination policies. Thirty-seven states have responded to the survey, of which twenty-two states disseminate disposition information from chapter 704-type cases to the general public. By disseminating this type of information, these states have recognized that the dissemination of this information is essential to maintaining the public’s safety.

Further, there continues to be an increase in the number of non-criminal justice agencies and the general public accessing conviction criminal history record information. Many agencies rely on this information in making decisions on employees or volunteers having direct contact with children, the disabled, and the elderly. The availability of the information governed by chapter 704 may be especially warranted in these situations.



SECTION 2. Section 846-9, Hawaii Revised Statutes, is amended to read as follows:

**“§846-9 Limitations on dissemination.** Dissemination of nonconviction data shall be limited, whether directly or through any intermediary, only to:

- (1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;
- (2) Individuals and agencies specified in section 846-10;
- (3) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement[.]; provided that such agreement shall specifically authorize access to data, limit the use of data to purposes for which given, and insure the security and confidentiality of the data consistent with the provisions of this chapter;
- (4) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency; provided that such agreement shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and insure the confidentiality and security of the data consistent with the purposes of this chapter;
- (5) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate state or local officials or agencies; and
- (6) Agencies of state or federal government which are authorized by statute or executive order to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information.

These dissemination limitations do not apply to conviction data. These dissemination limitations also do not apply to data relating to cases in which the defendant is acquitted, or charges are dismissed, by reason of physical or mental disease, disorder, or defect under chapter 704.

Criminal history record information disseminated to noncriminal justice agencies shall be used only for the purposes for which it was given.

No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 117

H.B. NO. 3367

A Bill for an Act Relating to State Investments.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 36-21, Hawaii Revised Statutes, is amended to read as follows:

**“§36-21 Short-term investment of state moneys.** The director of finance may invest any moneys of the State which in the director’s judgment are in excess of the amounts necessary for meeting the immediate requirements of the State and where in the director’s judgment the action will not impede or hamper the necessary financial operations of the State in any bonds or interest-bearing notes or obligations of the State (including state director of finance’s warrant notes issued pursuant to chapter 40), or of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest, or in federal land bank bonds or joint stock farm loan bonds, or Federal Home Loan Bank notes and bonds or Federal Home Loan Mortgage Corporation bonds, or Federal National Mortgage Association notes and bonds, or in securities of a mutual fund whose portfolio is limited to bonds or securities issued or guaranteed by the United States or an agency thereof, or in repurchase agreements fully collateralized by any such bonds or securities, or in federally insured savings accounts, or in time certificates of deposit, or in certificates of deposit open account, or in repurchase agreements with federally insured banks, savings and loan associations, and financial services loan companies; provided that the investments are due to mature not more than five years from the date of investment. Income derived therefrom shall be a realization of the general fund.

Except with respect to an early withdrawal penalty on an investment permitted by this section, the amount of such penalty being mutually agreed at the time of acquisition of such investment, no investment permitted by this section shall require or may in the future require payments by the State, whether unilateral, reciprocal, or otherwise, including margin payments, or shall bear interest at a variable rate which causes or may cause the market price of such investment to fluctuate; provided that such limitation shall not apply to money market mutual funds which (1) invest solely in (A) direct and general obligations of the United States of America or (B) obligations of any agency or instrumentality of the United States of America the payment of the principal and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America, (2) are rated at the time of purchase “AAAm-G” or its equivalent by Standard & Poor’s Ratings Group, and (3) are open-end management investment companies regulated under the Investment Company Act of 1940, as amended, which calculate their current price per share pursuant to Rule 2a-7 (17 Code of Federal Regulations section 270.2a-7) promulgated under such act.

Furthermore, the State shall not acquire any investment or enter into any agreement in connection with the acquisition of any investment or related to any existing investment held by the State, which would require or may in the future require any payment by the State, whether unilateral, reciprocal, or otherwise, such as swap agreements, hedge agreements, or other similar agreements. For purposes of this section, a swap or hedge payment is any payment made by the State in consideration or in exchange for a reciprocal payment by any person, such as a variable rate payment in exchange for a fixed rate payment, a fixed rate payment in exchange for a variable rate payment, a payment when a cap or a floor amount is exceeded, or other similar payment. ”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 118

H.B. NO. 3383

A Bill for an Act Authorizing the Issuance of General Obligation Bonds and Making an Appropriation for the Reimbursement of the Airport Revenue Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The director of finance is authorized to issue general obligation bonds in the sum of \$64,400,000, or so much thereof as may be necessary, and the same sum, or so much thereof as may be necessary, is appropriated for fiscal year 1996-1997, for the purpose of reimbursing the airport revenue fund for funds used in purchasing two parcels of land in Kapolei.

SECTION 2. The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 1996.

(Approved June 12, 1996.)

## ACT 119

H.B. NO. 3389

A Bill for an Act Relating to Municipal Leases.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds and determines that:

- (1) Substantial growth in lease purchase agreements, installment sale agreements, and other similar financing agreements entered into by state agencies to finance real or personal property has occurred in the last several years and similar growth is projected to continue and even accelerate in the coming years;
- (2) The agencies that rate the credit of the state general obligation, revenue, and other bonds take into consideration the "off-the-books" financings undertaken by state agencies including lease purchase and installment sale financings; and
- (3) Although "off-the-books" financings are not considered to be a legal debt of the issuer, the rating agencies, nevertheless, have threatened to downgrade, in numerous cases, the rating of an issuer's general obligation or other debt, if the issuer intentionally fails to make the appropriations for payments due under these financings.

The purpose of this Act is to avoid jeopardizing the ratings on state bonds and to maintain the fiscal integrity of the State, by establishing procedures in the state budgeting process and other fiscal and legal oversight to monitor, coordinate, and control "off-the-books" financings.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

## “CHAPTER MANAGEMENT OF FINANCING AGREEMENTS

§ **-1 Definitions.** Unless the context requires otherwise, as used in this chapter:

“Agency” means the State or any executive department, independent commission, board, authority, bureau, office, or other establishment of the State (except the legislature and its agencies and the judiciary), or any public corporation that is supported in whole or in part by state funds, or any agent thereof, authorized by law to expend available moneys.

“Attorney general” means the attorney general of the State or any duly designated deputy attorney general.

“Available funds” means funds appropriated or otherwise made available, from time to time, by the legislature to pay amounts due under a financing agreement for the fiscal period in which the payments are due, together with any unexpended proceeds of the financing agreement, and any reserves or other amounts that have been deposited in trust to pay amounts due under the financing agreement. The legislature shall not be obligated to appropriate or otherwise make funds available.

“Credit enhancement agreement” means any agreement or contractual relationship between the State or any state agency and any bank, trust company, insurance company, surety bonding company, pension fund, or other financial institution providing additional credit on or security for a financing agreement or certificates of participation authorized by this chapter.

“Director” means the director of finance or any duly designated deputy director of finance.

“Financing agreement” means any lease purchase agreement, installment sale agreement, loan agreement, or other agreement to finance the improvement, use, or acquisition of real or personal property that is or will be owned or operated by the State or any state agency, or to refinance previously executed financing agreements including certificates of participation.

“Personal property” means tangible personal property, software, and fixtures.

“Property rights” means, with respect to personal property, the rights of a secured party under chapter 490, and, with respect to real property, the rights of a trustee or lender under a lease authorized by section 3(5).

“Software” includes software, training, and maintenance contracts related to the operation of computer equipment.

§ **-2 Financing agreements.** Only with the approval of the director, and the approval by the attorney general of form and legality, may the agency enter into a financing agreement in accordance with this chapter, upon terms the agency finds to be advantageous. Any financing agreement entered into by the agency without the approvals required by this section shall be void and of no effect. Financing agreements shall be subject to the following limitations:

- (1) Amounts payable by the agency under a financing agreement shall be limited to available funds. In no circumstance shall the agency be obligated to pay amounts due under a financing agreement from any source other than available funds. If, by reason of insufficient available funds or other reason, amounts due under a financing agreement are not paid when due, the lender may exercise any property right that the agency has granted to it in the financing agreement, against the property that was purchased with the proceeds of the financing agreement, and apply the amounts so received toward payments scheduled to be made by the agency under the financing agreement;

- (2) No property rights may be granted in property unless the property is being acquired, is to be substantially improved, or is to be refinanced with the proceeds of a financing agreement, or is land on which such property is located;
- (3) The agency shall not enter into financing agreements under any provision of law other than this chapter if the principal amount of the financing agreement, together with the principal amount of any financing agreement previously issued by the agency for the same project, exceeds \$100,000; and
- (4) The sale, assignment, or other disposition of any financing agreements, including certificates of participation shall require the approval of the director.

§ -3 **Related agreements.** With the approval of the director and the approval by the attorney general of form and legality, an agency may:

- (1) Enter into agreements with trustees to hold financing agreement proceeds, payments, and reserves as security for lenders to accept assignments of rights in the financing agreement from, and to enforce such rights of the lessor or other party thereto, and to issue certificates of participation for the right to receive payments due from the agency under a financing agreement. Amounts held by a trustee shall be invested by the trustee at the direction of the agency in such investments as shall be specified in the agreement with the trustee. Interest earned on any investment held by a trustee as security for a financing agreement may, at the option of the agency, be credited to the accounts held by the trustee and applied in payment of sums due under a financing agreement;
- (2) Enter into credit enhancement agreements for financing agreements or certificates of participation, provided that the credit enhancement agreements shall be payable solely from available funds and amounts received from the exercise of property rights granted under such financing agreements;
- (3) Use financing agreements to finance the costs of acquiring or refinancing property, plus the costs of reserves and credit enhancements and costs associated with obtaining the financing;
- (4) Use a single financing agreement to finance property to be used by multiple agencies;
- (5) Grant leases of real property subject to section -2(2). The leases may be for a term that ends on the date on which all amounts due under a financing agreement have been paid or provision for payment has been made, or ten years after the last scheduled payment under a financing agreement, whichever is later. The leases may grant the lessor the right to evict the agency and exclude it from possession of the real property for the term of the lease if the agency fails to appropriate or pay when due the amounts scheduled to be paid under a financing agreement or otherwise defaults under a financing agreement. Upon failure to pay or default, the lessor may sublease the land to third parties and apply any rentals toward payments scheduled to be made under a financing agreement;
- (6) Grant security interests in personal property subject to section -2(2). The security interests shall attach and be perfected on the date the agency takes possession of the personal property, or the date the lender advances money under a financing agreement, whichever is later. A security interest authorized by this section shall have, except as

otherwise provided by law, priority over all other liens and claims. Upon failure to pay or default, the secured party shall have the rights and remedies available to a secured party under chapter 490 or a first, perfected security interest in goods and fixtures. No later than ten days after a security interest authorized by this section attaches, the agency shall cause a financing statement for the security interest to be filed with the bureau of conveyance in the same manner as financing statements are filed for goods;

- (7) Pledge any amounts that are deposited with a trustee in accordance with a financing agreement. The pledge shall be valid and binding from the time it is made, the amounts so pledged shall immediately be subject to the lien of the pledge without filing, physical delivery, or other act, and the lien of the pledge shall be superior to all other claims and liens of any kind whatsoever;
- (8) Bill any other agency that benefits from property acquired with the proceeds of a financing agreement for an appropriate share of the financing costs, including debt service, on a monthly or other periodic basis, and deposit payments received in connection with the billings with a trustee as security for a financing agreement. Any agency receiving such a bill shall be authorized and shall pay the amounts billed from the first amounts legally available to it; and
- (9) Purchase fire and extended coverage or other casualty insurance for property that is acquired or refinanced with proceeds of a financing agreement, assign the proceeds thereof to a lender or trustee to the extent of their interest, and covenant to maintain such insurance while the financing agreement is unpaid, so long as available funds are sufficient to purchase such insurance.

**§ -4 Inclusion in governor's budget request.** There shall be included in the governor's budget request to the legislature, for each fiscal period, amounts sufficient to permit the payment of all amounts that will be due on unpaid financing agreements during that fiscal period.

**§ -5 Financing agreements not a general obligation of State.** Financing agreements shall:

- (1) Not be obligations for which the full faith and credit of the agency is pledged; and
- (2) Have no claim or lien on any revenues or other moneys of the agency except moneys appropriated or otherwise held in trust for such purpose.

Financing agreements entered into under this chapter shall not constitute "bonds" within the meaning of Section 12 of Article VII of the Constitution of the State. No holder or holders of any financing agreement entered into under this chapter shall have the right to compel any exercise of taxing power of the agency to pay such financing agreements or the interest thereon and no moneys other than amounts appropriated or otherwise held in trust for such purpose shall be required to be applied to the payment thereof. Each financing agreement issued under this chapter shall recite in substance that such agreement, including the interest component thereof, shall not be an obligation for which the full faith and credit of the agency is pledged, and that such financing agreement shall have no claim or lien on any revenues or other moneys of the agency except moneys appropriated or otherwise held in trust for such purpose.

**§ -6 Federal tax-exempt status; preference; protection.** (a) To the extent practicable, financing agreements issued pursuant to this chapter shall be

issued to comply with requirements imposed by applicable federal law providing that the interest on financing agreements shall be excluded from gross income for federal income tax purposes, except as certain minimum taxes or environmental taxes may apply. The director or chair of the agency may:

- (1) Enter into agreements;
- (2) Establish funds or accounts;
- (3) Make rebate payments to the federal government; and
- (4) Take any action required to comply with applicable federal tax law.

Nothing in this chapter shall prohibit the issuance of financing agreements, the interest on which may be included in gross income for federal income tax purposes.

(b) To insure that interest on a financing agreement issued pursuant to this chapter that is excluded from gross income for federal income tax purposes, except as provided in subsection (a), on the date of issuance shall continue to be excluded, no state officer or employee shall authorize or allow any change, amendment, or modification to a financing agreement which would affect the exclusion of interest on such financing agreement from gross income for federal income tax purposes unless the change, amendment, or modification shall have received the prior approval of the director or chair of the agency that entered into the financing agreement. Failure to receive the approval of the director or chair of such agency shall render any change, amendment, or modification void.

**§ -7 Financing agreements legal investments.** All public officers and agencies, all political subdivisions, all insurance companies and associations, all banks, savings banks, and savings institutions, including building or savings and loan associations, all credit unions, all trust companies, all personal representatives, guardians, trustees, and all other persons and fiduciaries in the State who are regulated by law as to the character of their investment, may legally invest funds within their control and available for investment in financing agreements of the agency. The purpose of this section is to authorize any person, firm, corporation, association, political subdivision, body, or officer, public or private, to use any funds owned or controlled by them, including, without prejudice to the generality of the foregoing, sinking, insurance, investment, retirement, compensation, pension, trust funds, and funds held on deposit, for the purchase of any financing agreements of the agency.

**§ -8 Exemption from taxation.** All real and personal property owned or operated by the agency and payments made under the financing agreements to which the property is subject shall be exempt from all state, county, and municipal taxation. Financing agreements issued pursuant to this chapter and the income therefrom, including, without limitation, the interest component of any lease payments, shall be exempt from all taxation by the agency or any county or other political subdivision thereof, except inheritance, transfer, and estate taxes.

**§ -9 Litigation; jurisdiction.** The director of finance may petition the supreme court for an opinion as to the validity of any financing or related agreement entered into pursuant to the provisions of this chapter. The petition shall constitute a case for purposes of section 602-5, and the supreme court shall have exclusive and original jurisdiction to receive and determine the question presented in the petition, irrespective of an actual controversy or dispute regarding the agreement or its validity.”

SECTION 3. Section 37-62, Hawaii Revised Statutes, is amended as follows:

1. By adding three new definitions to be appropriately inserted and to read:

““Certificate of participation” means any certificate evidencing a participation right or a proportionate interest in any financing agreement or the right to receive proportionate payments from the state or a state agency due under any financing agreement.

“Financing agreement” means any lease purchase agreement, installment sale agreement, loan agreement, or any other agreement to finance the improvement, use, or acquisition of real or personal property that is or will be owned or operated by the State or any agency or to refinance any such previously executed financing agreement including certificates of participation.

“Lease payments” means payments made by the State or any agency under any financing agreement.”

2. By amending the definition of “agency” to read:

““Agency” means any executive department, independent commission, board, agency, authority, bureau, office, or other establishment of the state government (except the legislature and the judiciary), or any quasi-public institution which is supported in whole or in part by state funds.”

3. By amending the definition of “cost elements” to read:

““Cost elements” means the major subdivisions of a cost category. [For the] The category “capital investment[,]” [it] includes plan, land acquisition, design, construction, and equipment and furnishing. [For the] The categories “research and development” and “operating[,]” [it includes] include personal services, current lease payments, other current expenses, equipment, and motor vehicles.”

4. By amending the definition of “operating costs” to read:

““Operating costs” means recurring costs of operating, supporting and maintaining authorized programs, including costs for personnel salaries and wages, employee fringe benefits, lease payments,<sup>1</sup> supplies, materials, equipment, and motor vehicles.”

SECTION 4. Section 37-69, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) The financial plan for the ensuing six fiscal years shall more specifically include:

- (1) Economic data for the State and the counties of the following kinds:
  - (A) Population [-]: Including historical, current, and projected population count; population distribution by age and sex; estimated increases and decreases, including increases and decreases by immigration[, etc.];
  - (B) Employment [-]: Including magnitude of labor force by age and sex; labor force participation rates; employment by age and sex; industry and occupational surpluses and shortages; effects of government programs on employment rate[, etc.];
  - (C) Income [-]: Including per capita and per family income; disposable income; income distribution[, etc.];
  - (D) Wages and prices [-]: Including wages by industry and occupational groups; prices for government procurement items; construction costs; cost of living index; price indices for components of personal consumption[, etc.];



- (E) Industry and business trends[.]; and
- (F) Effects of national economic and financial policies and conditions[.];
- (2) Brief statements disclosing the basis upon which the revenue estimates in the plan were made, including for each specific tax and nontax revenue source[, the]:
  - (A) The previous projections for the last completed fiscal year and the fiscal year in progress[, the];
  - (B) The variance between the projections and the actual or revised estimate, and the reasons for the variances; [the tax]
  - (C) Tax or source base and rates; [yield]
  - (D) Yield projections of existing revenue sources and existing taxes at authorized rates; [assumptions]
  - (E) Assumptions made and methodology used in projections; [changes]
  - (F) Changes recommended[, projected]; and
  - (G) Projected yields if changes are adopted[.]; etc.;
- (3) At the lowest level on the state program structure, for each program:
  - (A) The total actual program cost for the last completed fiscal year, the estimated cost for the fiscal year in progress, and the estimated cost for each of the next six fiscal years; research and development, operating, and capital costs shall be included and the means of financing shall be [appropriately] identified. The number of personnel positions and all lease payments shall be shown for the program, identified by their means of financing[.];
  - (B) The program size indicators; the actual size attained in the last completed fiscal year, the estimated size for the fiscal year in progress, and the estimated size for each of the next six fiscal years[.]; and
  - (C) The effectiveness measures; the actual level of effectiveness attained in the last completed fiscal year, the estimated level of effectiveness for the fiscal year in progress, and the estimated level for each of the next six fiscal years[.];
- (4) Appropriate displays of paragraph (3)(A) and (C) [immediately above], at every level of the state program structure above the lowest level, by the major groupings of programs encompassed within the level. The displays of (3)(A) shall appropriately identify the means of financing and the number of positions included in the level[.];
- (5) Financial summaries displaying the State's financial condition, actual for the last completed fiscal year, and estimated for the fiscal year in progress[, and [estimated for] each of the next six fiscal years, including:
  - (A) A display of the programmed, total state expenditures, by cost categories, the total state resources anticipated from existing tax and nontax sources at existing rates, by resource categories, [(including the fund balance or deficit at the beginning of the fiscal year and bond receipts)], and the resulting fund balance or deficit at the close of each fiscal year. Lease payments in each cost category shall be stated separately; and
  - (B) The changes proposed to the existing tax and nontax rates, sources or structure, and the estimated increases or reductions in revenues, the estimated cumulative increases or reductions, and the estimated fund balance or deficit in each of the next six fiscal years as a result of such proposed changes. Proposals for changes

in the existing tax and nontax rates, sources or structure shall be made in every case where the proposed, total state expenditures exceed the total resources anticipated from existing tax and nontax sources at existing rates.

Such financial summaries shall be prepared for the total state expenditures and resources and for the general fund and special fund portions thereof[.];

- (6) A summary of the balance of each special fund, actual for the last completed fiscal year and estimated for the fiscal year in progress and estimated for each of the next six fiscal years[.];
- (7) A summary of the State's total bond fund required to carry out the recommended programs and the kinds of bonds and amounts thereof through which [such] the requirements were met in the last completed fiscal year, are to be met in the fiscal year in progress, and are proposed to be met in each of the next six fiscal years. The summary shall detail, for each fiscal year:
  - (A) Of the total bond fund requirements, the amount, by cost categories, requiring new bond issuance authorization and the kinds and amounts of bonds planned for issuance under such new authorizations[.];
  - (B) By bond categories, the total, cumulative balance of bonds authorized in prior years but unissued and the amount thereof proposed to be issued[.]; and
  - (C) A recapitulation of the total bonds to be issued, including both new authorizations and prior authorizations, by bond categories[.];
- (8) Separately for general fund tax revenues, special fund tax revenues, general fund nontax revenues, and special fund nontax revenues:
  - (A) By kinds of taxes or sources, the amount of revenue from existing, authorized taxes or sources at existing rates received in the last completed fiscal year and estimated to be received in the fiscal year in progress and in each of the next six fiscal years[.];
  - (B) A summary of the proposed changes in the existing taxes or sources or rates, and the estimated increases or reductions in revenues in each of the next six fiscal years resulting from such changes[.]; and
  - (C) The total estimated revenues with and without the proposed changes in each of the next six fiscal years[.];
- and
- (9) A summary of the State's total payments due under financing agreements required to carry out the recommended programs and the kinds of financing agreements and amounts thereof through which the requirements were met in the last completed fiscal year, are to be met in the fiscal year in progress, and are proposed to be met in each of the next six fiscal years. The summary shall detail, for each fiscal year:
  - (A) Of the total financing agreement requirements, the amount, by cost categories, requiring new financing agreement authorizations and the kinds and amounts of financing agreements planned for execution and delivery under such new authorizations;
  - (B) By cost category, the cumulative balance of financing agreements authorized in prior years but not executed and delivered and the amount proposed to be executed and delivered; and

- (C) A recapitulation of the total financing agreements to be executed and delivered, including both new authorizations and prior authorizations, by cost categories.

(d) The program plans for the ensuing six fiscal years shall more specifically include:

- (1) At the lowest level on the state program structure, for each program:
  - (A) A statement of its objectives[.];
  - (B) Measures by which the effectiveness in attaining the objectives is to be assessed[.];
  - (C) The level of effectiveness planned for each of the ensuing six fiscal years[.];
  - (D) A brief description of the activities encompassed[.];
  - (E) The program size indicators[.];
  - (F) The program size planned for each of the next six fiscal years[.];
  - (G) A narrative explanation of the plans for the program. It shall contain, and in general be limited to, the following:
    - (i) A description of the kinds of activities carried out or unusual technologies employed;
    - (ii) A statement of key policies pursued;
    - (iii) Identification of important program or organizational relationships involved;
    - (iv) A description of major external trends affecting the program;
    - (v) A discussion of significant discrepancies between previously planned cost, effectiveness, and program size levels and those actually achieved;
    - (vi) Comments on, and an interpretation of, cost, effectiveness, and program size data over the upcoming budget period, with special attention devoted to changes from the current budget period;
    - (vii) Comments on, and an interpretation of, cost, effectiveness, and program size data over the four years of the planning period and how they relate to the corresponding data for the budget period; and
    - (viii) A summary of the special analytic study, program evaluation, or other analytic report supporting a substantial change in the program where such a major program change recommendation has been made[.];
  - (H) The full cost implications of the recommended programs, by cost categories and cost elements, actually experienced in the last completed fiscal year, estimated for the fiscal year in progress, and estimated for each of the next six fiscal years. The means of financing shall be identified for each cost category. The personal services cost element and the lease payments cost element shall be shown separately; the cost elements of other current expenses, equipment, and motor vehicles may be combined. The number of positions included in the program shall be appropriately identified by means of financing[.];
  - (I) A recapitulation of subparagraph (H) [above] for the last completed fiscal year, the fiscal year in progress and each of the next six fiscal years, by means of financing grouped under each cost category. The number of positions included in any program shall be appropriately identified[.];

- (J) An identification of the revenues generated in the last completed fiscal year and estimated to be generated in the fiscal year in progress and in each of the next six fiscal years, and the fund into which such revenues are deposited[.];
- (K) Details of implementation of each capital improvement project included in the total program cost, including:
  - (i) A description of the project, location, and scope;
  - (ii) The initially estimated, currently estimated, and final cost of the project, by investment cost elements and by means of financing;
  - (iii) The amounts previously appropriated by the legislature for the project, by cost elements and by means of financing specified in the acts appropriating the sums, and an identification of the acts so appropriating;
  - (iv) The costs incurred in the last completed fiscal year and the estimated costs to be incurred in the fiscal year in progress and in each of the next six fiscal years, by cost elements and by means of financing; and
  - (v) A commencement and completion schedule, by month and year, of the various phases of the capital improvement project (i.e., land acquisition, design, construction, and occupancy) as originally intended, as currently estimated, and as actually experienced[.];
- and
- (L) A crosswalk of the program expenditures, by cost categories and cost elements between the program and expending agencies for the next two fiscal years. The means of financing and the number of positions included in the program costs to be expended by each agency shall be specified[.];
- and
- (2) Appropriate displays at every level of the state program structure above the lowest level. The displays shall include:
  - (A) A listing of all major groupings of programs included within the level, together with the objectives, measures of effectiveness, and planned levels of effectiveness for each of the ensuing six fiscal years for each such major groupings of programs[.]; and
  - (B) A summary of the total cost of each cost category by the major groupings of programs encompassed within the level, actual for the last completed fiscal year and estimated for the fiscal year in progress and for each of the next six fiscal years.”

SECTION 5. Section 37-71, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) The display of financial requirements for the ensuing two fiscal years shall more specifically include:

- (1) At the lowest level on the state program structure, for each program:
  - (A) The total recommended expenditures, including research and development, capital and operating costs, by cost categories and cost elements for the ensuing biennium; the planned allocation of the total biennial request, by cost categories, and cost elements, between the two fiscal years of the biennium. The means of financing and the number of positions included in any cost category amount shall be appropriately identified[.];

- (B) A summary showing means of financing the total recommended expenditures, those amounts requiring and those amounts not requiring legislative appropriation or authorization for spending in each fiscal year of the biennium[.];
- (C) A crosswalk of the total proposed biennial expenditures between the program and expending agencies. The means of financing the number of positions and the lease payments included in any cost amount, and the net amount requiring appropriation or authorization shall be appropriately identified for each expending agency[.]; and
- (D) The proposed changes in the levels of expenditures, by cost categories, between the biennium in progress and the ensuing biennium, together with a brief explanation of the major reasons for each change. The reasons shall include, as appropriate, the following:
  - (i) Salary adjustments to existing positions of personnel[.];
  - (ii) The addition or deletion of positions[.];
  - (iii) Changes in the number of persons being served or to be served by the program[.];
  - (iv) Changes in the program implementation schedule[.];
  - (v) Changes in the actual or planned level of program effectiveness[.];
  - (vi) Increases due to the establishment of a program not previously included in the State's program structure[.];
  - (vii) Decreases due to the phasing out of a program previously included in the State's program structure[.]; and
  - (viii) Changes in the purchase price of goods or services[.];

As appropriate, references to the program and financial plan shall be noted for an explanation of the changes. Notwithstanding the provisions of subsection (b)(5) [of this section], the proposed changes in the levels of expenditures may be shown to the nearest thousand dollars[.];

- (2) Appropriate summaries of paragraph (1)(A) and (C) immediately above at every level of the state program structure above the lowest level. Such summaries shall be by the major groupings of programs encompassed within the level. The summaries of paragraph (1)(A) shall identify the means of financing and the number of positions and the lease payments included in any cost category amount[.]; and
- (3) A summary listing of all capital improvement projects included in the proposed capital investment costs for the ensuing biennium. The listing shall be by programs at the lowest level of the state program structure and shall show for each project, by investment cost elements:
  - (A) The cost of the project[.];
  - (B) The amount of funds previously appropriated and authorized by the legislature[.]; and
  - (C) The amount of new appropriations and authorizations proposed in each of the two fiscal years of the ensuing biennium and in each of the succeeding four years. The amount of the new appropriations and authorizations proposed shall constitute the proposed new requests for the project in each of the fiscal bienniums.

In every instance, the means of financing shall be noted.

(d) The summaries of the state receipts and revenues shall more specifically include:

- (1) Financial summaries displaying the State's financial condition, to-wit:

- (A) A display of the proposed, total state expenditures, by cost categories, the total state resources anticipated from existing taxes and nontax sources at existing rates, by resource categories (including the available fund balances or deficits and anticipated bond receipts), and the fund balance or deficit resulting therefrom for the biennium in progress, for the ensuing biennium, and for each of the two fiscal years of the ensuing biennium[.]; and
- (B) The changes proposed to the existing tax and nontax rates, sources, or structure, and the estimated cumulative increases or reductions, and the estimated fund balance or deficit in the ensuing biennium and in each of the two fiscal years of the biennium as a result of such proposed changes. Proposals for changes in the existing tax and nontax rates, sources, or structure shall be made in every case where the proposed, total state expenditures exceed the total state resources anticipated from existing tax and nontax sources at existing rates.

Such financial summaries shall be prepared for the total state expenditures and resources and for the general fund and special fund portions thereof[.];

- (2) A summary of the balances of each special fund, actual for the last completed fiscal year and estimated for the fiscal year in progress and for each of the two fiscal years in the ensuing biennium[.];
- (3) A summary of the State's total bond fund required to carry out the recommended programs and the kinds of bonds and amounts thereof through which such requirements are to be met in the biennium in progress and in each of the two fiscal years in the ensuing biennium. The summary shall detail for the biennium in progress and for each of the two years of the ensuing biennium:
  - (A) Of the total requirements, the amount, by cost categories, requiring new bond issuance authorization and the kinds and amounts of bonds planned for issuance under such new authorization[.];
  - (B) By bond categories, the total, cumulative balance of bonds authorized in prior years but unissued and the amount thereof planned to be issued[.]; and
  - (C) A recapitulation of the total bonds, both new authorizations and prior authorizations, by bond categories, proposed to be issued[.];
- (4) A tentative schedule by quarter and fiscal year of the amount of general obligation bonds and the amount of revenue bonds proposed to be issued in the ensuing fiscal biennium[.];
- (5) A schedule of projected debt service charges for general obligation bonds outstanding at the time of the submission of the budget and to be issued by the close of the budget biennium in progress and the close of the ensuing budget biennium. The projection shall be separately stated for:
  - (A) Bonds currently outstanding[.];
  - (B) Bonds to be issued during the remainder of the fiscal biennium in progress and during the ensuing fiscal biennium[.]; and
  - (C) The total bonds currently outstanding and to be issued.

In each case, the projection shall be categorized into debt service to be paid directly from the general fund, debt service to be paid through reimbursements, and total debt service. The projection shall extend at least five years beyond the close of the ensuing fiscal biennium. An explanation shall be appended to the schedule, which shall include

- among other things, the amount of bonds to be issued during the fiscal year in progress and in each of the two fiscal years of the ensuing biennium, the maturities of the bonds to be issued, the method of retirement, and the interest rate assumed in the projection[.];
- (6) A schedule of the current state funded debt, legal debt limit, and the legal debt margin, including the details thereof. In any budget which proposes appropriations for which the source of funding is general obligation bonds, the schedule shall include a declaration by the director of finance and computations showing that the total amount of principal and interest, estimated for such proposed appropriations and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance[.];
  - (7) Separately for general fund tax revenues, special fund tax revenues, general fund nontax revenues, and special fund nontax revenues:
    - (A) By kinds of taxes or sources, the amount of revenue from existing, authorized taxes or sources at existing rates received in the last completed fiscal year and estimated to be received in the fiscal year in progress and in each of the two fiscal years in the ensuing biennium, with appropriate totals for the two bienniums[.];
    - (B) A summary of the proposed changes in the existing taxes or sources or rates, and the estimated increases or reductions in revenues in each of the two years in the ensuing fiscal biennium resulting from such changes[.]; and
    - (C) The total estimated revenues with and without the proposed changes[.];
- and
- (8) A summary of the State's total payments due under financing agreements required to carry out the recommended programs and the kinds of financing agreements and amounts thereof through which such requirements are to be met in the biennium in progress and in each of the two fiscal years in the ensuing biennium. The summary shall detail for the biennium in progress and for each of the two years of the ensuing biennium:
    - (A) Of the total financing agreement requirements, the amount, by cost categories, requiring new financing agreement authorizations and the kinds and amounts of financing agreements planned for execution and delivery under such new authorizations;
    - (B) By cost category, the cumulative balance of financing agreements authorized in prior years but not executed and delivered and the amount thereof proposed to be executed and delivered; and
    - (C) A recapitulation of the total financing agreements to be executed and delivered, including both new authorizations and prior authorizations, by cost categories."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 1996.

(Approved June 12, 1996.)

#### Note

1. Should be underscored.

A Bill for an Act Relating to Charitable Solicitations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 467B-3, Hawaii Revised Statutes, is amended to read as follows:

**“§467B-3 Reciprocal agreements.** The director may enter into a reciprocal agreement with the appropriate authority of another state for the purpose of exchanging information with respect to charitable organizations, professional fund-raising counsel, and professional solicitors. [Pursuant to the agreement, the director may accept information filed by a charitable organization, professional fund-raising counsel, or professional solicitor with the appropriate authority of another state in lieu of the information required to be filed in accordance with this chapter if the information is substantially similar to the information required under this chapter. The director may also grant exemption from the requirement of filing of annual statements to charitable organizations organized under the laws of another state having their principal place of business outside the State, whose funds are derived principally from sources outside the State and which have been granted exemption from the filing of annual statements by the state under whose laws they are organized if the state has a statute similar in substance to this chapter.]”

SECTION 2. Section 467B-2, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 467B-11, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 467B-14, Hawaii Revised Statutes, is repealed.

SECTION 5. Statutory material to be repealed is bracketed.<sup>1</sup>

SECTION 6. This Act shall take effect on July 1, 1996.

(Approved June 12, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Liquidation of Insurers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:15-103, Hawaii Revised Statutes, is amended by amending the definition of “guaranty association” to read as follows:

**“(9) Guaranty association** means the Property and Casualty Post-Assessment Guaranty Association created by part I of article 16, the Life and Health Guaranty Fund created by part II of article 16, and any other similar entity now or hereafter created by the legislature of this State for the payment of claims of insolvent insurers. Foreign guaranty association means any similar entities [now in existence in or hereafter] created by the legislature of any other state.”



SECTION 2. Section 431:15-332, Hawaii Revised Statutes, is amended to read as follows:

**“§431:15-332 Priority of distribution.** The priority of distribution of claims from the insurer’s estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be:

- [(a)] (1) Class 1. The costs and expenses of administration, including but not limited to the following:
  - [(1)] (A) The actual and necessary costs of preserving or recovering the assets of the insurer;
  - [(2)] (B) Compensation for all services rendered in the liquidation;
  - [(3)] (C) Any necessary filing fees;
  - [(4)] (D) The fees and mileage payable to witnesses; [and]
  - [(5)] (E) Reasonable attorney’s fees[.]; and
  - (F) The reasonable expenses of a guaranty fund or association, or foreign guaranty association in handling claims.
- [(b)] (2) Class 2. [The reasonable expenses of a guaranty fund or association, or foreign guaranty association in handling claims.] All claims under policies for losses incurred, including third party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, claims under nonassessable policies for unearned premium or other premium refunds, and all claims of a guaranty fund or association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to its employee shall be treated as a gratuity.  
Notwithstanding the foregoing, the following claims shall be excluded from class 2:
  - (A) Obligations of the insolvent insurer arising out of reinsurance contracts;
  - (B) Obligations incurred after the expiration date of the insurance policy or after the policy has been replaced by the insured or canceled at the insured’s request or after the policy has been canceled as provided in this section. Notwithstanding this paragraph, earned premium claims on policies, (other than reinsurance agreements) shall not be excluded;
  - (C) Obligations to insurers, insurance pools, or underwriting associations, and their claims for contribution, indemnity, or subrogation, equitable or otherwise;
  - (D) Any claim that is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer; and
  - (E) Any amount accrued as punitive or exemplary damages unless expressly covered under the terms of the policy.
- [(c)] (3) Class 3. [Debts due to employees for services performed to the extent that they do not exceed \$1,000 and represent payment for

services performed within one year before the filing of the petition for liquidation. Officers and directors shall not be entitled to the benefit of this priority. The priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.] Claims of the federal government.

- [(d)] (4) Class 4. [All claims under policies for losses incurred, including third party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, and all claims of a guaranty fund or association or foreign guaranty association. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to its employee shall be treated as a gratuity.] Debts due to employees for services performed to the extent that they do not exceed \$1,000 and represent payment for services performed within one year before the filing of the petition for liquidation. Officers and directors shall not be entitled to the benefit of this priority. The priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.
- [(e)] (5) Class 5. [Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors.] Claims of general creditors.
- [(f)] (6) Class 6. Claims of [the federal or] any state or local government. Claims including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of the claims shall be postponed to the class of claims under [subsection (h).] paragraph 8.
- [(g)] (7) Class 7. Claims filed late or any other claims other than claims under [subsections (h) and (i).] paragraphs 8 and 9.
- [(h)] (8) Class 8. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with the law.
- [(i)] (9) Class 9. The claims of shareholders or other owners.”

SECTION 3. The provisions of the Act do not affect rights, duties, or actions that are based upon events or acts which have taken place prior to the effective date of this Act, or the effective date of any provision of this Act, nor to penalties that were incurred or proceedings begun before the effective date of this Act.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

ACT 122

H.B. NO. 3432

A Bill for an Act Relating to School Personnel in the Department of Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 297, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§297- Certificates; revocation.** (a) The department may revoke any certificate after its issuance if the certificate holder does not possess the requisite qualifications. The department shall provide the certificate holder an opportunity to justify retaining the certificate before its revocation.

(b) Upon revocation of the certificate, the department may disclose the name, birthdate, Social Security number, and any other pertinent information about the former holder of the certificate related to the revocation for the purpose of exchanging information under chapter 315 with other national or state teacher certification agencies about school personnel who have had certificates revoked.”

SECTION 2. Section 297-2, Hawaii Revised Statutes, is amended to read as follows:

**“§297-2 Teachers; certificates[;], licenses, and credentials.** (a) No person shall serve as a teacher [before the 1997-1998 school year in any public school] in the department without first having obtained a certificate, license, or credential from the department [of education, which certificate shall be issued without cost to the teacher,] in such form as the department determines. The department shall establish types of certificates in the educational field and the requirements to qualify for those certificates[.] issued to teachers who are not required to obtain a license or credential pursuant to chapter 297D.

(b) Beginning with the 1997-1998 school year, no person [shall serve as a teacher in any public school] paid under the salary schedule contained in the unit 5 collective bargaining agreement shall serve as a teacher in the department without first having obtained a license or credential pursuant to chapter 297D from the department [of education] in such form as the department determines.”

SECTION 3. Section 297-4, Hawaii Revised Statutes, is amended to read as follows:

**“§297-4 Teaching without certificates[;], licenses, or credentials; penalty.** (a) Except as otherwise provided, before the 1997-1998 school year, whoever serves in the department as a teacher [in any public school] without holding an unrevoked certificate issued [hereunder,] under this chapter, shall be fined not more than \$25.

(b) Beginning with the 1997-1998 school year, whoever serves in the department as a teacher [in any public school], paid under the salary schedule contained in the unit 5 collective bargaining agreement, without holding an unrevoked or unsuspended license or credential issued under chapter 297D, shall be fined not more than \$500.

(c) Beginning with the 1997-1998 school year, whoever serves in the department as a teacher, not paid under the salary schedule contained in the unit 5 collective bargaining agreement, without holding an unrevoked certificate issued under this chapter, shall be fined not more than \$500.”

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. If S.B. No. 2446<sup>1</sup> is passed by the legislature in any form during this regular session of 1996, whether before or after the effective date of this Act, then sections -702 and -703, Hawaii Revised Statutes, as contained in section 2 of S.B. No. 2446<sup>1</sup> shall be amended to reflect the amendment of sections 297-2 and 297-4, Hawaii Revised Statutes, respectively, in this Act. The new section added to chapter 297, Hawaii Revised Statutes, by this Act shall be appropriately numbered and inserted in section 2 of S.B. No. 2446.<sup>1</sup>

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 7. This Act shall take effect upon its approval, except that section 2 shall take effect retroactive to July 1, 1995, and shall be repealed on June 30, 2000.

(Approved June 12, 1996.)

Notes

1. Act 89.
2. Edited pursuant to HRS §23G-16.5.

ACT 123

H.B. NO. 3434

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

**“§36-27 Transfers from special funds for central service expenses.** Except as provided in this section, and notwithstanding any other law to the contrary, from time to time the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special summer school and intersession fund under section 298-3.5;
- (2) School cafeteria special funds of the community colleges and the department of education;
- (3) Special funds of the student housing, summer session, [division] college of continuing education and community service, campus center, and bookstores of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center capital and operations special fund;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Spouse and child abuse special account under section 346-7.5;
- (11) Spouse and child abuse special account under section 601-3.6;
- (12) Funds of the employees' retirement system created by section 88-109;

- (13) Unemployment compensation fund established under section 383-121;
- (14) Hawaii hurricane relief fund established under chapter 431P;
- (15) The University of Hawaii tuition and fees special fund; and
- (16) Division of community hospitals' special funds,

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year."

SECTION 2. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;
- (2) Special summer school and intersession fund under section 298-3.5;
- (3) School cafeteria special funds of the community colleges, and the department of education;
- (4) Special funds of the student housing, summer session, [division] college of continuing education and community service, campus center, and bookstores of the University of Hawaii;
- (5) State educational facilities improvement special fund;
- (6) Special funds established by section 206E-6;
- (7) Aloha Tower fund created by section 206J-17;
- (8) Spouse and child abuse special account under section 346-7.5;
- (9) Spouse and child abuse special account under section 601-3.6;
- (10) Funds of the employees' retirement system created by section 88-109;
- (11) Unemployment compensation fund established under section 383-121;
- (12) Hawaii hurricane relief fund established under chapter 431P;
- (13) Convention center capital and operations special fund established under section 206X-10.5;
- (14) The University of Hawaii tuition and fees special fund; and
- (15) Division of community hospitals' special funds,

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned."

SECTION 3. Section 298-3.5, Hawaii Revised Statutes, is amended to read as follows:

**"[[§298-3.5]] Summer schools[;] and intersession programs; funds, expenditures.** All moneys received by and for the public summer schools and intersession programs of year-round schools from tuition and other fees or from any other source shall be deposited in a special summer school and intersession fund; and except as otherwise provided by the legislature, all expenditures for the operation of public summer schools and intersession programs shall be made from this fund."

## ACT 124

SECTION 4. If S.B. No. 2446<sup>1</sup> is passed by the legislature in any form during this regular session of 1996, whether before or after the effective date of this Act, then section -1410, Hawaii Revised Statutes, as contained in section 2 of S.B. No. 2446<sup>1</sup> shall be amended to reflect the amendment of section 298-3.5, Hawaii Revised Statutes, in this Act.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

### Note

1. Act 89.

## ACT 124

H.B. NO. 3481

A Bill for an Act Making an Appropriation for Martin Luther King, Jr., Holiday Activities by the Civil Rights Commission.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. There is appropriated out of the special fund account, S-95-303-P: Martin Luther King, Jr. commission, administered by the department of human resources development, the sum of \$9,372.25 for fiscal year 1996-1997, to fund activities related to the celebration of the Martin Luther King, Jr., state holiday.

SECTION 2. The sum appropriated shall be expended by the civil rights commission for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 1996.

(Approved June 12, 1996.)

## ACT 125

H.B. NO. 3498

A Bill for an Act Relating to Mental Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 321-171, Hawaii Revised Statutes, is amended to read as follows:

**“[§321-171]] Children’s mental health services; department responsibility.** It shall be the responsibility of the department of health to:

- (1) Provide preventative health services for children and youth;
- (2) Provide diagnostic and treatment services for emotionally disturbed children and youth; and
- (3) Provide treatment and rehabilitative services for mentally ill children and youth.

Such services shall be delivered at the earliest possible moment after the need for such services is established. All eligible children and youth between the ages of birth and seventeen shall receive the necessary mental health services to insure their proper and full development. If there is any adjudication or settlement of any legal

action involving the delivery of children's mental health services, the department of health shall be responsible for the coordination of carrying out the terms of the judgement or settlement."

SECTION 2. Section 334-4, Hawaii Revised Statutes, is amended to read as follows:

**"§334-4 Personnel for mental health program.** The director of health shall appoint [such] professional and nonprofessional staff as the director deems necessary to carry out the state mental health program and for which appropriations are available. Positions for psychiatrists are exempted from chapters 76 and 77. The director may employ [such] psychiatrists as [may be] needed by the department of health on a contractual basis, [the contract being] subject to the approval of the governor. The director of health may appoint an administrator, three associate hospital administrators, a risk manager, a patients' rights advisor, and a facilities plant engineer for the state hospital established pursuant to section 334-31 and these positions shall be exempt from chapters 76 and 77."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 1996.

(Approved June 12, 1996.)

## ACT 126

H.B. NO. 3505

A Bill for an Act Relating to the Reproductive Rights Protection Committee.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 560:5-610, Hawaii Revised Statutes, is amended to read as follows:

**"§560:5-610 Reproductive rights protection committee.** (a) There is established the reproductive rights protection committee within the department of health[, state planning council on developmental disabilities,] for administrative purposes. The committee shall consist of not fewer than five nor more than seven persons appointed, with the consent of the senate, by the governor for staggered terms as provided in section 26-34. The state planning council on developmental disabilities shall provide the governor with a list of nominees. The governor shall not be limited to the nominees provided in appointing the members of the committee. The committee shall include a person with a disability or the parent or guardian of such a person and persons from at least the following disciplines:

- (1) Law;
- (2) Medicine;
- (3) Theological or philosophical ethics;
- (4) Social work; and
- (5) Psychology or psychiatry.

(b) The committee shall review and make recommendations to the court on all petitions for sterilization. In making its recommendation to the court, the committee shall investigate and determine whether the ward is capable of giving informed assent and, if not, whether sterilization is in the best interests of the ward. The

## ACT 127

committee shall consider the criteria set forth in section 560:5-608, in determining whether the ward is capable of providing informed assent or whether sterilization is in the best interest of the ward.

(c) The committee or designated members of the committee may interview or request written statements from the ward, physicians, relatives, concerned individuals, and others who, in the committee members' judgment, possess relevant information concerning the petition for sterilization. Conversely, the ward, the guardian ad litem, the petitioner, or any other person may request to speak to the committee or submit a written statement to the committee concerning the proposed sterilization.

(d) The committee shall submit a report in writing to the court containing its recommendation together with supporting documentation. Committee members who do not concur with the majority recommendation also shall submit a report in writing to the court detailing the basis for their dissent.

(e) The members of the committee shall serve without pay but shall be reimbursed for their actual and necessary expenses, including travel expenses incurred in carrying out their duties.

[(f) The committee may hire staff, subject to chapters 76 and 77, to assist in the performance of the committee's duties.]''

SECTION 2. Statutory material to be repealed is bracketed.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 127

H.B. NO. 3525

A Bill for an Act Relating to the Hawaii Fisheries Coordinating Council.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 188E, Hawaii Revised Statutes, is repealed.

SECTION 2. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 128

H.B. NO. 3534

A Bill for an Act Relating to Enforcement.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to integrate the harbor patrol program into the statewide commercial harbors program by transferring those functions from the department of public safety to the department of transportation.

SECTION 2. Section 26-14.6, Hawaii Revised Statutes, is amended to read as follows:



**“§26-14.6 Department of public safety.** (a) The department of public safety shall be headed by a single executive to be known as the director of public safety.

(b) The department of public safety shall be responsible for the formulation and implementation of state policies and objectives for correctional, security, law enforcement, and public safety programs and functions, for the administration and maintenance of all correctional facilities and services, for the service of process, and for the security of state buildings.

(c) Effective July 1, 1990, the Hawaii paroling authority and the criminal injuries compensation commission are placed within the department of public safety for administrative purposes only.

(d) Effective July 1, 1990, the functions and authority heretofore exercised by:

- (1) The department of corrections relating to adult corrections and the intake service centers;
- (2) The judiciary relating to the sheriff's office and judiciary security personnel; and
- (3) The department of the attorney general relating to state law enforcement officers and narcotics enforcement investigators with the narcotics enforcement division,

shall be transferred to the department of public safety.

(e) Effective July 1, 1990, the functions and authority heretofore exercised by the department of health pursuant to chapters 329 and 329C, with the exception of sections 329-2, 329-3, and 329-4(3) to (8), shall be transferred to the department of public safety.

(f) Effective July 1, 1990, the functions, authority, and obligations, together with the limitations imposed thereon and the privileges and immunities conferred thereby, exercised by a “sheriff”, “sheriffs”, a “sheriff's deputy”, “sheriff's deputies”, a “deputy sheriff”, “deputy sheriffs”, or a “deputy”, under sections 21-8, 47-18, 88-51, 105-4, 134-11, 134-51, 183D-11, 187A-14, 231-25, 281-108, 281-111, 286-52, 286-52.5, 321-1, 322-6, 325-9, 325-80, 353-11, 360-5, 360-14, 383-71, 438-5, 445-37, 482E-4, 485-6, 501-42, 501-171, 501-218, 521-78, 578-4, 584-6, 587-33, 603-29, 604-6.2, 606-14, 607-2, 607-4, 607-8, 633-8, 634-11, 634-12, 634-21, 634-22, 651-33, 651-37, 651-51, 654-2, 655-2, 657-13, 660-16, 666-11, 666-21, 803-23, 803-34, 803-35, 804-14, 804-18, 804-41, 805-1, 806-71, and 832-23 shall be exercised to the same extent by the department of public safety.

[(g) Effective July 1, 1991, the functions and authority heretofore exercised by the director of transportation and the department of transportation related to law enforcement, including those pertaining to parking at its facilities and security, shall be transferred to the department of public safety, except that law enforcement for airports and for parking facilities at airports shall continue to be under the jurisdiction of the department of transportation.

(h) [(g)] Effective January 1, 1993, the functions and authority heretofore exercised by the attorney general and the department of the attorney general relating to the executive security officers shall be transferred to the department of public safety.

[(i)] [(h)] Effective January 1, 1993, the functions and authority heretofore exercised by the superintendent of education and the department of education relating to after hours security contracts at its facilities, including the security functions being performed by employees of the public library system as well as the contractual security services for the libraries, shall be transferred to the department of public safety.

[(j)] [(i)] Effective January 1, 1993, the functions and authority heretofore exercised by the director of health and the department of health relating to uniformed

security employees and security contracts at various state hospitals throughout the State shall be transferred to the department of public safety.

[(k)] (j) Effective January 1, 1993, the functions and authority heretofore exercised by the director of human services and the department of human services relating to contractual security guard services shall be transferred to the department of public safety.

[(l)] (k) Effective July 1, 1994, the functions and authority heretofore exercised by the adjutant general relating to security for national guard and state civil defense facilities in the Diamond Head complex, for after work hours, shall be transferred to the department of public safety.”

SECTION 3. Section 266-24, Hawaii Revised Statutes, is amended to read as follows:

**“§266-24 Enforcement.** (a) For the purpose of the enforcement of this chapter and of all rules adopted pursuant to this chapter, the powers of police officers are conferred upon the director of transportation and any officer, employee, or representative of the department of transportation. Without limiting the generality of the foregoing, the director and any person appointed by the director hereunder may serve and execute warrants, arrest offenders, and serve notices and orders. [Every] The director of transportation and any employee, agent, or representative of the department of transportation appointed as enforcement officers by the director, and every state and county officer charged with the enforcement of [laws and ordinances] any law, statute, rule, regulation, ordinance, or order, shall enforce and assist in the enforcement of this chapter and of all rules [adopted pursuant to this chapter.] and orders issued pursuant thereto, and in carrying out the responsibilities hereunder, each shall be specifically authorized to:

- (1) Conduct any enforcement action hereunder in any commercial harbor area and any area over which the department of transportation and the director of transportation has jurisdiction under this chapter;
- (2) Inspect and examine at reasonable hours any premises, and the buildings and other structures thereon, where harbors or harbor facilities are situated, or where harbor-related activities are operated or conducted; and
- (3) Subject to limitations as may be imposed by the director of transportation, serve and execute warrants, arrest offenders, and serve notices and orders.

For purposes of this subsection, the term “agents and representatives” includes persons performing services at harbors or harbor areas under contract with the department of transportation.

(b) The department of transportation, in the name of the State, may enforce this chapter and the rules and orders issued pursuant thereto by injunction or other legal process in the courts of the State.”

SECTION 4. All rights, powers, functions, and duties of the department of public safety relating to the harbor patrol program shall be transferred to the department of transportation.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act; provided, however, nothing in this Act shall be construed to exempt any officer or employee of the State involved in this

transfer from any type of employment action, including, without limitation, any reduction in force.

SECTION 5. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of public safety relating to the harbor patrol program relating to the functions transferred to the department of transportation shall be transferred with the functions to which they relate.

SECTION 6. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 1996.

(Approved June 12, 1996.)

## ACT 129

H.B. NO. 3537

A Bill for an Act Making an Appropriation for Compensation of Criminal Injuries.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,244,780 or so much thereof as may be necessary for fiscal year 1996-1997 for the purpose of compensating certain persons or their providers of services pursuant to chapter 351, Hawaii Revised Statutes.

SECTION 2. The sum appropriated shall be deposited in the criminal injuries compensation fund to be used for payments as authorized by the criminal injuries compensation commission.

The sum appropriated shall be expended by the department of public safety for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 1996.

(Approved June 12, 1996.)

A Bill for an Act Relating to the Department of Public Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to delete the functions of centralizing the collections, and maintenance of all information and statistical data for the department of public safety from the intake service center division. Originally, the correctional information and statistics office of the state intake service centers was assigned the duties of collecting and maintaining this data. Upon the creation of the department of corrections and ultimately the department of public safety, the correctional information and statistics office was administratively assigned to general administration. Although the responsibilities of the correctional information and statistics office were transferred to general administration, the statutory functions remained with the intake service center division. This bill attempts to correct this by giving the director the ability to assign this function to the appropriate office or agency.

SECTION 2. Section 353-10, Hawaii Revised Statutes, is amended to read as follows:

“**§353-10 Intake service centers.** There shall be within the department of public safety, an intake service center for adults in each of the counties, to screen, evaluate, and classify the admission of persons to community correctional centers. Each center shall be directed and managed by a manager and shall be staffed by a team of psychiatrists, social workers, technicians, and other personnel as may be necessary. The director of public safety may appoint full-time or part-time professional and clerical staff or contract for professional services.

The centers shall:

- (1) Provide orientation, guidance, and technical services;
- (2) Provide social-medical-psychiatric-psychological diagnostic evaluation;
- (3) Provide pretrial assessments on adult offenders for the courts and assist in the conduct of presentence assessments on adult offenders and the preparation of presentence reports when requested by the courts;
- (4) Provide correctional prescription program planning and security classification;
- (5) Provide such other personal and correctional services as needed for both detained and committed persons; and
- (6) Monitor and record the progress of persons assigned to correctional facilities who undergo further treatment or who participate in prescribed correctional programs[; and
- (7) Centralize the collection and maintenance of all information and statistics relating to detained and committed persons under the department's jurisdiction].”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

ACT 131

H.B. NO. 3563

A Bill for an Act Relating to Fees Imposed by the Department of Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 231-25.5, Hawaii Revised Statutes, is amended to read as follows:

**“§231-25.5<sup>1</sup> Cost recovery fees for the administration of taxes.** (a) The department may charge and add a fee to any amount due in accordance with the department’s duties and powers under section 231-3 for [any]:

- (1) Any cost or expense incurred by the department as a result of any action taken to enforce the collection of taxes administered under title 14, including levy, seizure, foreclosure, and other similar acts, after the department has mailed written notice demanding payment and advising that continued failure to pay the amount due may result in collection action, including the imposition of fees pursuant to this section. Any such fee charged against the taxpayer for costs, fees, and other charges, may include attorneys’ fees, collection agency fees, court filing fees, recording fees, and similar fees, incurred by the department in connection with the collection action[.];
- (2) Department-sponsored seminars or workshops, including educational materials in various media formats;
- (3) Research and reference materials published on magnetic media, CD-ROM, or other machine-readable form; and
- (4) The re-issuance of refund checks to taxpayers; provided that no fee shall be charged if the amount of the refund check is less than the fee.

(b) The director may waive any fee imposed by the department under title 14 in cases of hardship as determined by the director.

~~[(b)]~~ (c) Interest shall not accrue with respect to any fee charged under this section.

~~[(c)]~~ (d) Notwithstanding any other provisions provided under title 14, whenever a taxpayer makes a partial payment of a particular delinquent amount, the amount received by the department shall first be credited to the fees provided by this section, in the order that the fees were charged.

~~[(d)]~~ (e) The department shall prescribe the procedures relating to the charging of fees, the waiver of fees, the documents and services for which fees may be charged, and the amount of the fees, increasing or decreasing the fees as necessary, pursuant to rules adopted under chapter 91.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

**Note**

1. So in original.

A Bill for an Act Relating to Bulk Transfers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 237-43, Hawaii Revised Statutes, is amended to read as follows:

“§237-43 **Bulk sales; transfers; penalties.** (a) In any case of the sale or transfer in bulk of the whole, or a large part of a stock of merchandise and fixtures, or merchandise, or fixtures, or other assets or property of a business, otherwise than in the ordinary course of trade, business, commerce, or sales, the seller shall make a written and verified report of the bulk sale or transfer to the department not later than ten days after the possession, or the control, or the title of the property, or any part thereof, has passed to the purchaser. The report shall contain the name and address of the purchaser, a brief description of the property sold and the purchase price, the date when the sale or transfer is to be or was consummated, and such other facts as the department may require. The purchaser may make the report for the seller.

(b) The purchaser of the property shall withhold payment of the purchase price until the receipt of a certificate from the department to the effect that all taxes, penalties, and interest levied or accrued under title 14 for taxes administered by the department against the seller, or constituting a lien upon the property, have been paid. A certificate shall not be issued while the department investigates (including by audit) whether taxes have been levied or accrued against the seller. The certificate shall show on its face that the department has had notice of the bulk sale or transfer, and shall also show the names of the seller and purchaser, a brief description of the property sold or transferred, and the date of consummation of the sale or transfer, together with such other information as the department shall prescribe.

(c) If the required report of the bulk sale or transfer is not made, or if the taxes, penalties, and interest shall not be paid within twenty days after the sale or transfer, or within such further time as the department may allow, the purchaser shall be personally liable to pay to the State the amount of all taxes, penalties, and interest levied or accrued under title 14 for taxes administered by the department against the seller or constituting a lien upon the property, together with penalties and interest thereafter accruing, not exceeding, however, the amount of the purchase price. The issuance of a certificate in the prescribed form shall be a complete defense to the bulk sale or transfer liability imposed in the preceding sentence, but shall not be a defense to any liability of the purchaser under any other provision of law for liabilities and obligations. Any purchaser succeeding to the liabilities of the seller under this section shall make a written report thereof upon the next due date for the reporting of gross income taxes.

(d) For purposes of this section:

“Property” means anything that may be the subject of ownership, including every kind of asset, whether real or personal, tangible or intangible, and without limitation, such as land and buildings, goodwill, notes, accounts, and other intangible property. The term “property” shall not include any interest in residential real property.

“Purchase price” means the total fair market value, as of the date of sale or transfer, of all property transferred, whether or not money or property is exchanged therefor.

“Purchaser” means any person who receives property in a bulk sale or transfer, whether or not money or property is exchanged therefor.

“Sale” means the transfer of property for compensation.

“Seller” means any person who sells or transfers any property in a bulk sale or transfer, whether or not money or property is exchanged therefor.

“Transfer” means the sale, conveyance, or distribution by any mode, direct or indirect, absolute or conditional, voluntary or involuntary, of title to or beneficial ownership in property, or interest therein. The term “transfer” does not include a bona fide, arm’s length:

- (1) Creation, modification, or termination of a lease interest;
- (2) Creation, modification, or release of a lien or encumbrance; or
- (3) Transfer occurring as a result of the enforcement of a lien.

(e) Failure to make the report required by this section shall be punishable by a fine of not more than \$100. Any seller who wilfully fails to make the report required by this section shall, in addition to other penalties provided by law, be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

(f) The purchaser shall have the purchaser’s remedy against the seller for the amount of taxes, penalties, or interest paid by the purchaser.

(g) This section supplements and does not displace any remedies available to the department under the Uniform Fraudulent Transfer Act and the principles of law and equity.”

SECTION 2. Act 92, Session Laws of Hawaii 1995, is amended by repealing section 14.

[“SECTION 14. Section 237-43, Hawaii Revised Statutes, is amended to read as follows:

**“§237-43 Bulk sales.** (a) Report. In any case of the sale in bulk of the whole, or a large part of a stock of merchandise and fixtures, or merchandise, or fixtures, or other assets of a business, otherwise than in the ordinary course of trade, and in the regular and usual prosecution of the seller’s business, the seller shall make a written and verified report of the bulk sale to the department of taxation not later than ten days after the possession, or the control, or the title of the property, or any part thereof, has passed to the purchaser. The report shall contain the name and address of the purchaser, a brief description of the property sold and the purchase price, the date when the sale is to be or was consummated, and such other facts as the department may require. The purchaser may make the report for the seller.

(b) Tax clearance. The purchaser of the property shall withhold payment of the purchase price until the receipt of a certificate from the department to the effect that all taxes, penalties, and interest levied or accrued under this chapter against the seller, or constituting a lien upon the property, have been paid, which certificate shall show on its face that the department has had notice of the bulk sale, and shall also show the names of the seller and purchaser, a brief description of the property sold, and the date of consummation of the sale, together with such other information as the department shall prescribe.

(c) Purchaser’s liability. If the required report of the bulk sale is not made, or if the taxes, penalties, and interest shall not be paid within twenty days after the possession, or the control, or the title of the property, or any part thereof, has passed to the purchaser, or within such further time as the department may allow, the purchaser shall be personally liable to pay to the State the amount of all taxes, penalties, and interest levied or accrued under this chapter against the seller or constituting a lien upon the property, together with penalties and interest thereafter accruing, not exceeding, however, the amount of the purchase price, but the issuance of a certificate in the prescribed form shall be a complete defense to such liability of the purchaser. In any case of such liability upon the part of the purchaser, a written

report thereof shall be made by the purchaser upon the next due date for the payment of gross income taxes.

(d) Purchase price defined. For the purposes of this section the "purchase price" shall include money, or the value of any consideration other than money.

(e) Purchaser's remedy. The purchaser shall have the purchaser's remedy against the seller for the amount of taxes, penalties, or interest paid by the purchaser."}]

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 133

H.B. NO. 3567

A Bill for an Act Relating to the Rounding of Tax Return Item Entries.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 231-9, Hawaii Revised Statutes, is amended to read as follows:

**"§231-9 Tax collection; general duties, powers of director[.]; dollar rounding.** (a) The director of taxation shall collect all taxes according to the assessments. The director of taxation shall duly and accurately account to the director of finance for the collection and the amount of taxes according to such assessments and shall be liable and responsible for the full amount of the taxes assessed, unless the director of taxation shall under oath account for the noncollection of the same to the full satisfaction of the director of finance, or shall be released from accountability as provided in section 231-32. The director of taxation shall, from time to time, pay over to the director of finance all taxes collected, at such times as the director of finance shall direct. The county attorney of each county shall, under the supervision and direction of the attorney general, assist the director of taxation in the collection of all taxes.

(b) The director of taxation may require the rounding of tax return items (upward and downward) to the nearest whole dollar amount; provided that amounts of 50 cents shall be rounded upward."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1996.)



## ACT 134

H.B. NO. 3577

A Bill for an Act Relating to Transportation of Hazardous Materials, Hazardous Waste, Infectious Substances, and Medical Waste.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 286, Hawaii Revised Statutes, is amended by amending the title of part XII to read as follows:

**“[PART XII] TRANSPORTATION OF HAZARDOUS MATERIALS, HAZARDOUS WASTE, [AND ETIOLOGIC AGENTS] INFECTIOUS SUBSTANCES, AND MEDICAL WASTE”**

SECTION 2. Section 286-221, Hawaii Revised Statutes, is amended to read as follows:

**“[§286-221] Definitions.** As used in this part, unless the context otherwise requires:

[“Etiologic agent” means a viable microorganism, or its toxin, which causes or may cause human disease.]

“Extremely hazardous substance” means for transportation purposes, chemicals transported in commerce that could cause serious health effects following short-term exposure from accidental releases and which are listed in part 355 of title 40 of the Code of Federal Regulations.

“Hazardous material” means a substance or material, including a hazardous substance, which has been determined by the United States Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

“Hazardous materials incident” means an occurrence or likely occurrence or potential of a spill, release, leakage, dumping, or loss of control of an extremely hazardous substance, hazardous substance, hazardous material, hazardous waste, [or etiologic agent] infectious substance, or medical waste during the course of transportation in commerce including loading, unloading, or temporary storage.

“Hazardous substance” means for transportation purposes, shipments of particular quantities of hazardous substances that are significant enough to be a substantial threat to public health and the environment, and which are listed in part 172 of title 49 of the Code of Federal Regulations.

“Hazardous waste” means any material designated in part 261 of title 40[,] of the Code of Federal Regulations and which are subject to the hazardous waste manifest requirements of part 262 of title 40, Code of Federal Regulations.

“Infectious substance” means a viable microorganism, or its toxin, which causes or may cause disease in humans and animals.

“Medical waste” means for transportation purposes, shipments of medical waste material generated in the diagnosis, treatment, or immunization of human beings and animals, in research pertaining thereto, in the production or testing of biologicals, or which are further described as regulated medical waste in part 173 of title 49, Code of Federal Regulations.

“Transportation-related release” means a release of a hazardous material, hazardous substance, extremely hazardous substance, hazardous waste, [or etiologic agent] infectious substance, or medical waste that occurs during the course of transportation in commerce including storage incidental to transportation while under active shipping papers or manifests and which has not reached the ultimate consignee.”

SECTION 3. Section 286-222, Hawaii Revised Statutes, is amended to read as follows:

“**[[§286-222]] General powers.** (a) The department of transportation may regulate the transportation of hazardous materials, hazardous [wastes,] waste, hazardous substances, [and etiologic agents] infectious substances, and medical waste by motor carrier in commerce.

(b) The department shall annually adopt the hazardous materials regulations established by the United States Department of Transportation and published in title 49 of the Code of Federal Regulations, parts 107, 171 to 173, inclusive, and parts 177 [and], 178[.], and 180. All other rules adopted by the State and political subdivisions thereof shall be consistent therewith.

(c) Any hazardous material, including hazardous substances and hazardous [wastes,] waste, and any infectious substance or medical waste, which meets the federal and state criteria of a hazardous material, infectious substance, or medical waste must be handled and transported according to the appropriate requirements of the federal hazardous materials regulations and the additional requirements in this part.”

SECTION 4. Section 286-223, Hawaii Revised Statutes, is amended to read as follows:

“**[[§286-223]] Scope.** (a) The federal rules establish minimum standards and must be complied with when transporting a hazardous material, hazardous waste, hazardous substance, [or etiologic agent] infectious substance, or medical waste by motor carrier in commerce.

(b) For purpose of clarity and conformance with the rules established for describing hazardous materials on shipping papers and simplicity in hazardous materials incident reporting, hazardous substances and extremely hazardous substances as previously defined, shall be reported as hazardous materials.

(c) Transport shall be deemed to include any operation incidental to the whole course of carriage by motor carrier from shippers point of origin to final destination.

(d) No person shall transport any hazardous material, hazardous waste, hazardous substance, [or etiologic agents] infectious substance, or medical waste outside the confines of the person’s facility or other location of storage or use, or offer or deliver any hazardous materials, hazardous [wastes,] waste, hazardous substances, [or etiologic agents] infectious substances, or medical waste to a motor carrier for transportation in commerce, nor shall any motor carrier accept any hazardous materials, hazardous [wastes,] waste, hazardous substances, [or etiologic agents] infectious substances, or medical waste for transport, without compliance with the applicable requirements of the hazardous materials rules adopted by the department, including those relating to packaging of hazardous materials, hazardous [wastes,] waste, hazardous substances, [and etiologic agents,] infectious substances, and medical waste, marking and labeling of packages, preparation and carriage of shipping papers or manifests, handling, loading, and unloading packages, placarding of the transporting vehicle, inspection of motor carrier vehicles, and motor carrier accident and hazardous materials incident reporting.

(e) No person in the course of transportation in commerce, shall spill, dump, deposit, or cause the release of a hazardous material, hazardous waste, hazardous substance, [or etiologic agent] infectious substance, or medical waste upon a public highway, street, or the surrounding or connecting property, [to include] including but not [be] limited to, storm drains, gutters, harbors, waterways, canals, lakes, and ocean shorelines, without immediately taking action to stop the spread of the

material or remove the same or cause the same to be removed. If such person fails to comply with this subsection, the governmental agency responsible for the maintenance of the highway, street, or property on which the material was deposited may remove such materials and collect, by civil action, if necessary, the actual cost of the removal operation and repair of damage to the affected facility or property from the person responsible as stated in this subsection.

(f) Owners or operators of a facility from which there is a transportation-related release are subject to the hazardous materials transportation incident reporting requirements of this part.

(g) A copy of any written report required under this part shall be submitted to the director of transportation within fifteen days of the reported incident."

SECTION 5. Section 286-224, Hawaii Revised Statutes, is amended to read as follows:

**"[§286-224] Inspections.** (a) Any shipment or transport of hazardous materials, hazardous [wastes, or] waste, hazardous substances, infectious substances, or medical waste, by motor vehicle in commerce of which vehicle placarding or a shipping paper or manifest is required by the hazardous materials regulations adopted by the State, is subject to inspection by persons appointed by the director of transportation to enforce the safe transportation of hazardous materials, hazardous [wastes, and] waste, hazardous substances, infectious substances, and medical waste in commerce and by those state and county officers charged with the enforcement of laws and ordinances adopted pursuant to this part.

(b) All carriers and persons that use a highway or street to transport hazardous materials, hazardous [wastes,] waste, hazardous substances, [or etiologic agents] infectious substances, or medical waste in commerce shall afford the director of transportation, persons designated by the director, and those persons designated by the county executive officers, reasonable opportunity to enter and inspect freight containers, and motor vehicles, to review and document deficiencies on shipping papers and manifests, and to inspect other places incidental to the transshipment of hazardous materials, hazardous [wastes,] waste, hazardous substances, [and etiologic agents] infectious substances, and medical waste by motor carrier vehicles."

SECTION 6. Section 286-225, Hawaii Revised Statutes, is amended to read as follows:

**"[§286-225] Hazardous materials [transportation] incident reporting.** (a) Any employee of the motor carrier, the driver, handlers, and loaders, and any employees of state and county governments shall report incidents involving hazardous materials, hazardous [wastes, and etiologic agents] waste, infectious substances, and medical waste as follows:

- (1) Upon becoming aware of or observing the potential or actual spill, leakage, or loss of control of a hazardous material, hazardous waste, or hazardous substance, shall immediately, or as soon as possible, notify the nearest police or fire department and make a report of the situation. This incident reporting requirement does not relieve a carrier or shipper of the responsibility to notify the United States Department of Transportation of certain hazardous materials incidents.
- (2) Whenever an [etiologic agent] infectious substance shipment is lost, stolen, or suspected or known to be leaking from its containment packaging, shall immediately, or as soon as possible, notify the state department of health, and the [Center] Centers for Disease Control in Atlanta, Georgia, and make a report of the situation.

- (3) Spillage or loss of control of a regulated medical waste shipment in commerce shall be reported immediately, or as soon as possible to the state department of health.

(b) Whenever possible, the incident report should include the name and telephone number of the person calling in the report, the name of the carrier, type of vehicle involved, injuries or fatalities connected with the incident, if any, the location and time of the incident, the duration of a chemical release into the environment, if known, a description of hazards involved to include the chemical name or identity of any substance released, hazardous materials classification, markings, and information on labels and placards affixed on packages, containers or vehicles, and emergency actions taken including evacuation to minimize hazardous effects to public health, safety, and property.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 135

H.B. NO. 3581

A Bill for an Act Relating to Highway Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-231, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Endorsement” means an authorization on an individual’s commercial driver’s license required to permit the individual to operate certain types of commercial motor vehicles.”

SECTION 2. Section 286-231, Hawaii Revised Statutes, is amended by amending the definition of “out-of-service order” to read as follows:

““Out-of-service order” means a [twenty-four hour prohibition against driving] declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle[,], or a motor carrier operation is out-of-service pursuant to section 386.72, 392.5, 395.13, or 396.9 of title 49, Code of Federal Regulations, or compatible laws, or the North American Uniform Out-of-Service Criteria, which can be obtained from the Commercial Vehicle Safety Alliance.”

SECTION 3. Section 286-234, Hawaii Revised Statutes, is amended to read as follows:

**“§286-234 Employer responsibilities.** (a) Each employer shall require the applicant to provide the information specified in section 286-233.

(b) No employer shall knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle during any period:

- (1) In which the driver has a driver’s license or permit suspended, revoked, or canceled by a state, has lost the privilege to drive a commercial

motor vehicle in a state, or has been disqualified from driving a commercial motor vehicle; or

(2) In which the driver has more than one driver's license.

(c) Any employer who violates [this section] subsection (a) or (b) shall for a first conviction be fined not more than \$100; for conviction of a second offense committed within one year after the date of the prior conviction, the employer shall be fined not more than \$300; for conviction of a third or subsequent offense committed within two years after the date of the second conviction, the employer shall be fined not more than \$1,000.

(d) No employer shall knowingly allow, permit, or authorize any individual to drive a commercial motor vehicle during any period in which the employee, the motor vehicle, or the motor carrier operation is subject to an out-of-service order.

(e) Any employer who is convicted of a violation of subsection (d) shall be subject to a fine of not less than \$2,500 nor more than \$10,000."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 136

H.B. NO. 3631

A Bill for an Act Relating to the Summoning of Jurors.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 612-14, Hawaii Revised Statutes, is amended to read as follows:

**"§612-14 Qualified jury wheel.** (a) Upon return of the juror qualification forms, the clerk, after careful investigation in each case, shall select for jury service all those persons whom the clerk believes are qualified and not exempt; provided that any person who is exempt may be selected if the person waives the person's exemption.

(b) The names of the persons so selected shall be placed in the qualified jury wheel, to be used in compiling lists of jurors subject to service during the ensuing year; provided that the clerk, with the approval of the court, may excuse a prospective juror for any cause set forth under section 612-7, in which case the name of the excused person shall not be placed in the qualified jury wheel.

(c) The clerk may place in the qualified jury wheel for further service the name of any juror who in the previous jury year wilfully or without reasonable excuse failed to appear as summoned."

SECTION 2. Section 612-19, Hawaii Revised Statutes, is amended to read as follows:

**"§612-19<sup>1</sup> Summoning of jurors.** (a) When so ordered by the court, the clerk shall transmit to the chief of police or a bailiff the names of jurors to be summoned. The chief of police or bailiff, either personally or through an authorized subordinate, shall summon the persons named to attend the court by giving personal notice to each of the time and place of required appearance as fixed by order of the

court. The court may order the summoning of jurors by any officer of the court, and the service of summons by any form of personal notice, including notice by telephone.

(b) A juror who wilfully or without reasonable excuse, fails to attend after [personal service of written] receipt of a summons [by a bailiff or police officer] by the court may be arrested and punished for contempt.

(c) The clerk may place in the qualified jury wheel for further service in the ensuing jury year the name of any juror who wilfully or without reasonable excuse failed to attend after receipt of a summons by the court."

SECTION 3. Section 612-22, Hawaii Revised Statutes, is amended to read as follows:

**"§612-22 Trial jurors subject to one year of service; one day or one trial requirement.** The persons whose names are placed on the certified lists filed by the clerk shall be subject to service for one year from and after January 1 and until the filing of new certified lists; provided that trial jurors shall serve only one day or one trial during the year. Prospective jurors who are challenged at voir dire and excused, excused for cause, summoned but not called to a courtroom, or called to a courtroom but later excused shall return to the juror pool to await reassignment to another trial. Jurors in the juror pool awaiting reassignment to another trial shall be discharged after it has been determined that their service<sup>2</sup> will not be needed. Jurors who are discharged from the juror pool shall be dismissed from service for the year[.]; provided that jurors who fail to appear as summoned may have their names placed in the qualified jury wheel for service in the ensuing jury year and where a request for deferment of service has been made and granted by the court, the period of time between the first date of summons to appear and the time that the juror is next summoned for service may be tolled and may be applied to extend the eligibility of service if the juror should not again be summoned or serve on an actual trial within the year. Jurors who are accepted to serve on a jury shall complete the duration of the trial and shall be dismissed from service for the year."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

#### Notes

1. So in original.
2. Prior to amendment "services" appeared here.

## ACT 137

H.B. NO. 3645

A Bill for an Act Relating to Collection of Fines and Costs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 291C, Hawai'i Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§291C- Collection of Fines and Costs.** (a) Unless discharged by payment or service of imprisonment in default of a fine, a fine may be collected in the same manner as a judgment in a civil action.

(b) Costs may be collected in the same manner as a judgment in a civil action, but shall not be deemed part of the penalty, and no person shall be imprisoned under this section in default of payment of costs.

(c) The state attorney general may institute proceedings to collect the fine, and costs, including interest and attorney’s fees, as a civil judgment in the court of appropriate jurisdiction.”

SECTION 2. Section 706-644, Hawai‘i Revised Statutes, is amended to read as follows:

**“§706-644 Consequences of nonpayment; imprisonment for contumacious nonpayment; summary collection.** (1) When a defendant sentenced to pay a fine or restitution defaults in the payment thereof or of any installment, the court, upon the motion of the prosecuting attorney or upon its own motion, may require the defendant to show cause why the defendant’s default should not be treated as contumacious and may issue a summons or a warrant of arrest for the defendant’s appearance. Unless the defendant shows that the defendant’s default was not attributable to an intentional refusal to obey the order of the court, or to a failure on the defendant’s part to make a good faith effort to obtain the funds required for the payment, the court shall find that the defendant’s default was contumacious and may order the defendant committed until the fine, restitution, or a specified part thereof is paid.

(2) When a fine or restitution is imposed on a corporation or unincorporated association, it is the duty of the person or persons authorized to make disbursement from the assets of the corporation or association to pay it from those assets, and their failure so to do may be held contumacious unless they make the showing required in subsection (1).

(3) The term of imprisonment for nonpayment of fine or restitution shall be specified in the order of commitment, and shall not exceed one day for each \$25 of the fine, thirty days if the fine was imposed upon conviction of a violation or a petty misdemeanor, or one year in any other case, whichever is the shorter period. A person committed for nonpayment of a fine or restitution shall be given credit toward payment for each day of imprisonment, at the rate of \$25 per day.

(4) If it appears that the defendant’s default in the payment of a fine or restitution is not contumacious, the court may make an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment, or revoking the fine or restitution or the unpaid portion thereof in whole or in part.

(5) [Upon any contumacious default in the payment of a fine or restitution or any installment thereof, execution may be levied and such other measures may be taken for the collection of the fine, or restitution, or the unpaid balance thereof as are authorized for the collection of an unpaid civil judgment entered against the defendant in an action on a debt.] The levy of execution for the collection of a fine or restitution shall not discharge a defendant committed to imprisonment for nonpayment of the fine or restitution until the amount of the fine or restitution has actually been collected or accounted for under subsection (3).

(6) Unless discharged by payment or service of imprisonment in default of a fine, a fine may be collected in the same manner as a judgment in a civil action.

(7) Costs may be collected in the same manner as a judgment in a civil action, but shall not be deemed part of the penalty, and no person shall be imprisoned under this section in default of payment of costs.

(8) The state attorney general may institute proceedings to collect the fine, and costs, including interest and attorney's fees, as a civil judgment in the court of appropriate jurisdiction."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on July 1, 1996.

(Approved June 12, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 138

H.B. NO. 3656

A Bill for an Act Relating to the Judiciary History Center.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 6F, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follow:

**"§6F- Judiciary history center trust fund.** (a) There is established as a separate fund of the judiciary, the judiciary history center trust fund. All funds contributed to the trust fund, including income and capital gains earned therefrom, shall be used exclusively to carry out the purposes of the center as defined in this chapter. The trust fund shall consist of any and all types of private, federal, and public contributions, which do not include any state funding, and any income, interest, and capital gains earned; provided that moneys or properties donated for center use and patrons' deposits shall be deposited and accounted for in accordance with rules adopted by the supreme court. The judiciary history center trust fund shall be subject to the following restrictions:

- (1) All funds, and any income, interest, and capital gains earned by investment of those funds, shall be expended by the friends to carry out the purposes of the center as set out in section 6F-5; and
- (2) Any other restrictions imposed by the legislature with respect to the transfer or appropriation of funds.

(b) The judiciary history center trust fund shall be subject to the terms and conditions provided in this section. The trust fund shall not be placed in the state treasury and the State shall not administer the fund nor be liable for its operation or solvency. The trust fund shall be a trust fund pursuant to section 37-62 administered by the friends.

(c) Any funds deposited in the trust fund, and any income, interest, and capital gains earned therefrom, that are not used for the purposes of the center as set out in section 6F-5, shall be invested in accordance with the provisions of the articles, by-laws, resolutions, or other instruments executed on behalf of the friends in a manner intended to obtain a reasonable commercial rate of return on investment of the fund.

(d) If the trust fund is terminated, all funds, including the income, interest, and capital gains earned by the investment of funds, shall be transferred to the general fund.

(e) The friends:



- (1) May enter into contracts as approved by the chief justice, with any association, individuals, or corporations to further the purposes of this section; provided that any blind vendor operating a vending facility pursuant to section 102-14 on or before January 1, 1996, shall not be displaced or dislocated;
  - (2) Shall require a certified public accountant to compile the financial statements, the result of which shall be submitted to the judiciary not more than thirty days after receipt by the friends; and
  - (3) Shall retain for a period of three years, any documents, papers, books, records, and other evidence that is pertinent to the trust fund, and permit inspection or access thereto by the judiciary, the legislature, the auditor, or their duly authorized representatives.
- (f) For purposes of this section, "friends" means the friends of the judiciary history center.

**§6F- Center concessions.** Notwithstanding any law to the contrary, all net income or proceeds received by the friends from the operation of any concession, or other for-profit business enterprise within or on the grounds of the center, shall be deposited into the trust fund. The disposition of the net income or proceeds shall be for purposes of the center only as set out in section 6F-5."

SECTION 2. Section 102-14, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) This section shall not apply to the judiciary history center facilities in the Ali'iolani Hale building, University of [Hawaii] Hawai'i system, public library system facilities, department of education facilities, department of transportation airport and harbor restaurant and lounge facilities and operations, public parks, and state and county facilities designed and intended for use as facilities for entertainment and other public events."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 139**

H.B. NO. 3769

A Bill for an Act Relating to Persons Dispossessed or Displaced by Volcanic Eruptions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 314, Session Laws of Hawaii 1991, as amended by Act 172, Session Laws of Hawaii 1993, and Act 81, Session Laws of Hawaii 1994, authorized the department of land and natural resources to negotiate and enter into long-term leases of sixty-five years in duration, subject to renewal by mutual agreement, with persons who met both of the following criteria:

- (1) Persons living in Kalapana who were dispossessed or displaced as a result of the volcanic eruptions on the island of Hawaii which began on January 3, 1983; and
- (2) Persons who meet the qualifications of section 13D-3(b), Hawaii Revised Statutes.

The lands eligible for long-term residential lease negotiations under Act 314, Session Laws of Hawaii 1991, as amended, were limited to those lands situated at the Kikala-Keokea homestead area, which is adjacent to and mauka of the Kalapana-Kapoho beach road, and identified as Tax Map Key: 1-2-07, parcels 2 and 30. The Act further stipulated that:

- (1) No more than 150 acres of the Kikala-Keokea homestead area could be used for the purposes of the Act; and
- (2) The size of any lot leased under the Act shall be at least one acre.

Further, Act 314, Session Laws of Hawaii 1991, as amended, authorized the department of land and natural resources to negotiate and enter into lease arrangements in accordance with certain provisions and limitations; provided that the authority granted by Act 314, Session Laws of Hawaii 1991, as amended, expired:

- (1) When leases have been negotiated and recorded in the bureau of conveyances for all parcels meeting the criteria in that Act; or
- (2) On December 31, 1995; whichever occurred first.

Prior to the expiration of Act 314, Session Laws of Hawaii 1991, as amended, on December 31, 1995, the department of land and natural resources negotiated and entered into lease arrangements with forty-eight out of a total of fifty-eight persons who met both of the eligibility criteria as set forth under the Act. Due to circumstances beyond the control of the department of land and natural resources, ten persons who met both of the eligibility criteria for Kikala-Keokea residential leases, did not or could not enter into lease arrangements with the department of land and natural resources before the expiration date of December 31, 1995.

SECTION 2. As there still exist available lots within the Kikala-Keokea residential subdivision for further lease arrangements, the department of land and natural resources is authorized to enter into long-term leases of sixty-five years in duration, subject to renewal by mutual agreement, with those ten persons who met both of the eligibility criteria as set forth under section 1 of Act 314, Session Laws of Hawaii 1991, as amended, and who were found to be eligible for a Kikala-Keokea residential lease by the application screening committee in October and November, 1995.

SECTION 3. The lands eligible for long-term residential lease arrangements under this Act are limited to those ten available and unencumbered Kikala-Keokea residential subdivision lots previously selected by those persons who met both of the eligibility criteria for Kikala-Keokea residential leases, and who did not or could not enter into lease arrangements with the department of land and natural resources before the December 31, 1995 expiration date of Act 314, Session Laws of Hawaii 1991, as amended. The size of any lot leased under this Act shall be at least one acre.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 140

H.B. NO. 3773

A Bill for an Act Relating to the Hawaiian Sovereignty Elections Council.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature through Act 359, Session Laws of Hawaii 1993, recognized the unique status that the Native Hawaiian people bear to the State of Hawaii and to the United States. In November 1993, the United States Congress adopted joint resolution P.L. 103-150, which acknowledged and apologized for the illegal overthrow of the Kingdom of Hawaii, and urged reconciliation between the United States of America and the Native Hawaiian people.

Through Act 200, Session Laws of Hawaii 1994, the legislature established the Hawaiian sovereignty elections council to oversee a vote to determine the will of the Native Hawaiian people to restore a nation of their own choosing. Under Act 200, moneys were also appropriated to enable the Hawaiian sovereignty elections council to educate, build consensus among the Native Hawaiian people, and conduct the vote. The task of the council is not yet completed, and the deadline for the appropriation needs to be extended.

The purpose of this Act is to provide a fair, open, and democratic process for all Native Hawaiian people to get involved and make a free choice as to whether to elect delegates who will convene to propose a Native Hawaiian government, and continue processes to build consensus within the Native Hawaiian community on the issue of Hawaiian self-governance.

SECTION 2. Act 359, Session Laws of Hawaii 1993, as amended by Act 200, Session Laws of Hawaii 1994, is amended by amending sections 2, 3, and 4 to read as follows:

“SECTION 2. **Purpose.** The purpose of this Act is to acknowledge and recognize the unique status that the [native] Native Hawaiian people bear to the State of Hawaii and to the United States and to facilitate the efforts of [native] the<sup>1</sup> Native Hawaiian<sup>2</sup> people<sup>1</sup> to determine [their will to be governed by an indigenous sovereign nation] self-governance of their own choosing. In the spirit of self-determination and by this Act, a Hawaiian sovereignty elections council is established to:

- (1) Hold a [plebiscite in 1995,] Native Hawaiian Vote in 1996 to determine the will of the [indigenous] Native Hawaiian people [to restore a nation] for self-governance of their own choosing; and
- (2) [Should the plebiscite be] Based upon the Native Hawaiian Vote approved by a majority of [qualified voters,] ballots cast, provide for a fair and impartial process to resolve the issues relating to form, structure, and status of [a] Hawaiian [nation.] self-governance.

SECTION 3. **Definitions.** As used in this chapter, unless the context otherwise requires:

“Council” means the Hawaiian sovereignty elections council.

“Hawaiian” and “[native] Native Hawaiian people”<sup>1</sup> mean the<sup>3</sup> descendants<sup>4</sup> of the races inhabiting the Hawaiian islands prior to 1778.

“Hawaiian organization” means any organization in the State which serves and represents the interests of Native Hawaiian<sup>2</sup> people,<sup>1</sup> has a membership consisting of at least a majority of Native Hawaiian<sup>2</sup> people,<sup>1</sup> and has been organized for at least one year.

[“Qualified voter” means any person qualified to vote pursuant to section 13D-3, Hawaii Revised Statutes.

“Special elections” means the Hawaiian convention referendum, the election of delegates, and the ratification election.]

**SECTION 4. Hawaiian sovereignty elections council.** (a) There is established within the department of accounting and general services for administrative purposes the Hawaiian sovereignty elections council, to carry out the purposes of this Act. The council shall consist of twenty members appointed by the governor without regard for section 78-4, Hawaii Revised Statutes. At least twelve of the twenty members shall be appointed from nominations submitted by Hawaiian organizations. Among the twelve, the governor shall appoint one member so designated from each of the following organizations: the Office of Hawaiian Affairs; Ka Lahui Hawaii; the State Council of Hawaiian Homestead Association; and the Association of Hawaiian Civic Clubs. The council shall consist of at least one member from each of the islands of Kauai, Niihau, Maui, Molokai, Lanai, Oahu, Hawaii,<sup>5</sup> and one member representing nonresident Hawaiians. Appointments shall be made before August 1, 1993, and shall not be subject to confirmation by the senate. Any appointment not made by that date shall be filled by the council during its first meeting which shall be held before August 15, 1993. After August 31, 1994, no member of the council shall be eligible to run in any special election under this Act. The members shall elect a chairperson and vice-chairperson. Any vacancy on the council after July 1, 1994, shall be filled by the governor from a list of nominees submitted by the council. If the governor fails to make an appointment within thirty days of receiving the list, the council shall make an appointment from the list of nominees. Members shall serve without compensation but shall be reimbursed for expenses, including travel and subsistence expenses, necessary for the performance of their duties.

(b) The council shall:

- (1) Plan and conduct the [plebiscite in 1995;] Native Hawaiian Vote in 1996;
- (2) Carry out the responsibilities necessary for the conduct of elections and the convening of delegates;
- (3) Provide for an apportionment plan;
- (4) Establish the eligibility of convention delegates;
- (5) Conduct Hawaiian voter education and registration; [and]
- (6) Establish task forces and committees necessary for the purposes of this Act[.]; and
- (7) Provide election guidelines and procedures for the Native Hawaiian Vote, without regard to chapter 91, Hawaii Revised Statutes.

(c) For the purposes of funding, the council shall submit [its plan for the election and convening of delegates] a final report of findings to the legislature not less than twenty days prior to the convening of the regular session of [1995.] 1997.

(d) The council shall cease to exist on December 31, 1996.”

**SECTION 3.** Act 200, Session Laws of Hawaii 1994, is amended by amending sections 1 and 2 to read as follows:

“SECTION 1. Findings. The legislature through Act 359, Session Laws of Hawaii 1993, recognized the unique status that the [native] Native Hawaiian people bear to the State of Hawaii and to the United States. The Hawaiian sovereignty advisory commission was established to seek counsel from the [native] Native Hawaiian people on how to facilitate the efforts to be governed by an indigenous sovereign nation of their own choosing.

In November 1993, the United States Congress adopted joint resolution P.L. 103-150, which acknowledged and apologized for the illegal overthrow of the

Kingdom of Hawaii, and urged reconciliation between the United States of America and the [indigenous] Native Hawaiian people.

SECTION 2. Purpose. In the spirit of self-determination and by this Act, the legislature supports the efforts of the [indigenous] Native Hawaiian people to:

- (1) Create an independent entity to carry out the purposes of this Act; and
- (2) Provide for a fair and impartial process to determine the will of the [indigenous] Native Hawaiian<sup>1</sup> people to restore a nation of their own choosing.”

SECTION 4. Act 200, Session Laws of Hawaii 1994, as amended by Act 11, Special Session Laws of Hawaii 1995, is amended by amending section 12 to read as follows:

“SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the sum of \$900,000[,] or so much thereof as may be necessary for fiscal year 1994-1995 and fiscal year 1995-1996<sup>1</sup> [,] for the purposes of this Act; provided that no funds shall be made available under this Act unless the Office of Hawaiian Affairs provides a dollar-for-dollar match of funds which are derived solely from revenues generated under the authority of section 5(f) of the Admission Act. The appropriation made for the purposes authorized in this section shall not lapse at the end of the fiscal biennium for which the appropriation is made; provided that any appropriation that is unencumbered as of June 30, 1997, shall lapse as of that date.

The sums appropriated or authorized shall be expended by the department of accounting and general services for the purposes of this Act.

The department of accounting and general services may hire staff as necessary to accomplish the purposes of this Act. [Such] These persons shall be exempt from chapters 76, 77, and 89, Hawaii Revised Statutes.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on June 29, 1996.

(Approved June 12, 1996.)

#### Notes

1. Should be underscored.
2. Prior to amendment “Hawaiians” appeared here.
3. Prior to amendment “any” appeared here.
4. Prior to amendment “descendent” appeared here.
5. So in original.

## ACT 141

H.B. NO. 3852

A Bill for an Act Relating to Special Purpose Revenue Bonds to Assist ETV Hawaii/ Elephant Television, Inc.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 278, Session Laws of Hawaii 1991, as amended by Act 240, Session Laws of Hawaii 1993, authorizes the issuance of special purpose revenue bonds under part V, chapter 39A, Hawaii Revised Statutes, to assist ETV

Hawaii/Elephant Television, Inc., as an industrial enterprise to provide television and film industry production and training to Hawaii's residents.

The legislature finds that under current federal law, bonds authorized pursuant to Act 278, as amended, cannot be issued such that the interest thereon is exempt from income taxation by the United States, and it is advisable to further revise Act 278 to expressly permit the issuance of the bonds authorized pursuant thereto to be issued as taxable bonds in order to facilitate the issuance of the special purpose revenue bonds for ETV Hawaii/Elephant Television, Inc. The legislature further finds that an extension of the authorized time period to issue the special purpose revenue bonds contained in Act 278, as amended, is appropriate in order that the five year delay does not prejudice ETV Hawaii/Elephant Television, Inc.

The purpose of this Act is to amend Act 278, Session Laws of Hawaii 1991, as amended, to increase the authorized amount of the special purpose revenue bonds, extend the duration of the authorized time period to issue the bonds for ETV Hawaii/Elephant Television, Inc., and expressly provide that such bonds may be issued notwithstanding that the interest thereon may be subject to income taxation by the United States under federal law.

SECTION 2. Act 278, Session Laws of Hawaii 1991, as amended by Act 240, Session Laws of Hawaii 1993, is amended as follows:

1. By amending section 2 to read:

"SECTION 2. The department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed [\$6,000,000.] \$10,000,000, in one or more series, for the purpose of assisting ETV Hawaii/Elephant Television, Inc., a Hawaii corporation, or a Hawaii profit or nonprofit corporation established by or under the auspices of ETV Hawaii/Elephant Television, Inc., in the generation of new capital for its television and film industry production and training facility on Maui. The legislature finds and determines that the activities and facilities of ETV Hawaii/Elephant Television, Inc., or a Hawaii profit or nonprofit corporation established by or under the auspices of ETV Hawaii/Elephant Television, Inc., constitute a project defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise."

2. By amending section 4 to read:

"SECTION 4. The special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises. Special purpose revenue bonds issued under this Act, to the extent practicable, shall be issued to comply with the requirements imposed by applicable federal law providing that the interest shall be excluded from gross income for federal income tax purposes (except as certain minimum taxes or environmental taxes may apply); provided that nothing in this Act shall be deemed to prohibit the issuance of special purpose revenue bonds under this Act, the interest on which may be included in gross income for federal income tax purposes."

3. By amending section 5 to read:

"SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, [1998.] 2001."

SECTION 3. Session law material to be repealed is bracketed. New session law material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 142

H.B. NO. 3853

A Bill for an Act Relating to Special Purpose Revenue Bonds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 39A, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

**“§39A- Federal tax exempt status.** Special purpose revenue bonds issued pursuant to this part, to the extent practicable, shall be issued to comply with requirements imposed by applicable federal law providing that the interest on the special purpose revenue bonds shall be excluded from gross income for federal income tax purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this part shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income tax purposes.”

SECTION 2. Chapter 39A, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

**“§39A- Federal tax exempt status.** Special purpose revenue bonds issued pursuant to this part, to the extent practicable, shall be issued to comply with requirements imposed by applicable federal law providing that the interest on the special purpose revenue bonds shall be excluded from gross income for federal income tax purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this part shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income tax purposes.”

SECTION 3. Chapter 39A, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

**“§39A- Federal tax exempt status.** Special purpose revenue bonds issued pursuant to this part, to the extent practicable, shall be issued to comply with requirements imposed by applicable federal law providing that the interest on the special purpose revenue bonds shall be excluded from gross income for federal income tax purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this part shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income tax purposes.”

SECTION 4. Chapter 39A, Hawaii Revised Statutes, is amended by adding a new section to part V to be appropriately designated and to read as follows:

**“§39A- Federal tax exempt status.** Special purpose revenue bonds issued pursuant to this part, to the extent practicable, shall be issued to comply with requirements imposed by applicable federal law providing that the interest on the special purpose revenue bonds shall be excluded from gross income for federal income tax purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this part shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income tax purposes.”

SECTION 5. Chapter 39A, Hawaii Revised Statutes, is amended by adding a new section to part VI to be appropriately designated and to read as follows:

**“§39A- Federal tax exempt status.** Special purpose revenue bonds issued pursuant to this part, to the extent practicable, shall be issued to comply with requirements imposed by applicable federal law providing that the interest on the special purpose revenue bonds shall be excluded from gross income for federal income tax purposes (except as certain minimum taxes or environmental taxes may apply). The director of finance may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this part shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income tax purposes.”

SECTION 6. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 143**

S.B. NO. 1735

A Bill for an Act Relating to Loans.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that parts II and IV, chapter 189, Hawaii Revised Statutes, authorizing the department of business, economic development, and tourism to make loans for financing the purchase, construction, renovation, maintenance, and repair of fishing vessels has had minimal activity since 1986. This has been due in part to the suspension of new loans for the purchase or construction of vessels since then, with only loans for repair and maintenance being processed. In view of this, the legislature finds that it is more efficient and economical to consolidate these loan programs with the Hawaii capital loan program and associated revolving loan fund.

The legislature further finds that fiscal efficiency can be achieved by authorizing the department of business, economic development, and tourism to transfer up



to \$1,000,000 in the aggregate, within the calendar year, between the state disaster revolving loan fund and the Hawaii capital loan revolving fund or the Hawaii innovation development fund. Such a transfer would be made only upon the declaration of a state disaster and with the specific approval of the governor. The flexibility to transfer funds will permit better use of available funds by allowing the State to provide immediate assistance to businesses and individuals with disaster relief and rehabilitation needs.

SECTION 2. Section 209-34, Hawaii Revised Statutes, is amended to read as follows:

**“§209-34 State disaster revolving loan fund.** (a) There is established the state disaster revolving loan fund into which shall be deposited all moneys appropriated by the legislature to the fund, contributed or transferred to the fund, and received as repayment of loans and interest payments as provided in this part, and from which the director of business, economic development, and tourism may make loans in accordance with [provisions of] this part.

(b) The director may transfer moneys from the state disaster revolving loan fund established by this section to either the Hawaii capital loan revolving fund established by section 210-3 or the Hawaii innovation development fund established by section 211E-2. Moneys from the Hawaii capital loan revolving fund established by section 210-3, the Hawaii innovation development loan revolving fund established by section 211E-2, and the state disaster revolving loan fund shall be disbursed by the department or the director pursuant to chapters 209, 210, and 211E, respectively. The department or the director may transfer moneys from the Hawaii capital loan revolving fund and the Hawaii innovation development fund to the state disaster revolving loan fund for disbursement pursuant to this chapter.

(c) The total amount of moneys transferred to the state disaster revolving loan fund, the Hawaii capital loan revolving fund, or the Hawaii innovation development fund shall not exceed \$1,000,000 for each respective fund within the calendar year.

(d) Notwithstanding subsection (c) to the contrary, the total amount of moneys transferred between the state disaster revolving loan fund and the Hawaii capital loan revolving fund or the Hawaii innovation development fund shall not exceed \$1,000,000 within the calendar year if the governor proclaims a state disaster pursuant to section 209-2.

(e) The director shall report any transfer of funds made under this section to the legislature within ten days of the transfer.

(f) All unexpended and unencumbered moneys remaining in the state disaster revolving loan fund at the close of each fiscal year, which are deemed[,] by the director of finance[,] to be in excess of the moneys necessary to carry out the purposes of this section over the next following fiscal year, shall lapse to the credit of the [state] general fund.”

SECTION 3. Section 210-3, Hawaii Revised Statutes, is amended to read as follows:

**“§210-3 Hawaii capital loan revolving fund.** (a) There is established the Hawaii capital loan revolving fund into which shall be deposited all moneys received as repayment of loans and interest payments as provided in this chapter. The department may transfer moneys from the Hawaii capital loan revolving fund established by this section to either [to] the [Hawaii large fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund established by section 189-23, the Hawaii small fishing vessel purchase, construction, renovation,

maintenance, and repair loan revolving fund established by section 189-43,] state disaster revolving loan fund established by section 209-34, or the Hawaii innovation development [loan revolving] fund established by section 211E-2, and moneys from these three funds shall be disbursed by the department or the director pursuant to chapters [189] 209, 210, and 211E, respectively[, and further, the]. The department or the director may transfer moneys from the [revolving funds enumerated in this section] state disaster revolving loan fund and the Hawaii innovation development fund to the Hawaii capital loan revolving fund for disbursement pursuant to this chapter[; provided that:].

[(1)] (b) The total amount of moneys transferred [into any revolving fund] to the state disaster revolving loan fund, the Hawaii capital loan revolving fund, or the Hawaii innovation development fund shall not exceed \$1,000,000 for each [revolving] respective fund within the calendar year[; and].

(c) Notwithstanding subsection (b) to the contrary, the total amount of moneys transferred between the state disaster revolving loan fund and the Hawaii capital loan revolving fund or the Hawaii innovation development fund shall not exceed \$1,000,000 within the calendar year if the governor proclaims a state disaster pursuant to section 209-2.

[(2)] (d) The department shall report any transfer of funds made under this section to the legislature within ten days of the transfer.'

SECTION 4. Section 211E-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established a revolving fund to be known as the Hawaii innovation development fund [to], that shall be administered by the department of business, economic development, and tourism for the purpose of promoting the development of new products or inventions that have direct economic benefits for Hawaii. The department shall provide low interest loans pursuant to subsection (b) to inventors for the development of their new product or invention. All moneys received as repayment of loans and interest payment shall be deposited in the fund. The department may transfer moneys from the [loan revolving] Hawaii innovation development fund established by this section to either the [Hawaii large fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund established by section 189-23, the Hawaii small fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund established by section 189-43,] state disaster revolving loan fund established by section 209-34, or the Hawaii capital loan revolving fund established by section 210-3, and moneys from these three funds shall be disbursed by the department or the director pursuant to chapters [189 and] 209, 210, and 211E, respectively[, and further, the]. The department or the director may transfer moneys from the [revolving funds enumerated in this section] state disaster revolving loan fund and the Hawaii capital loan revolving fund to the Hawaii innovation development [loan revolving] fund for disbursement pursuant to this chapter[; provided that]:

- (1) The total amount of moneys transferred [into any revolving fund] to the state disaster revolving loan fund, the Hawaii capital loan revolving fund, or the Hawaii innovation development fund shall not exceed \$1,000,000 for each [revolving] respective fund within the calendar year[; and]
- (2) Notwithstanding paragraph (1), the total amount of moneys transferred between the state disaster revolving loan fund and the Hawaii capital loan revolving fund or the Hawaii innovation development fund shall not exceed \$1,000,000 within the calendar year if the governor proclaims a state disaster pursuant to section 209-2; and

[(2)] (3) The department shall report any transfer of funds made under this section to the legislature within ten days of the transfer.”

SECTION 5. Section 189-23, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 189-43, Hawaii Revised Statutes, is repealed.

SECTION 7. All encumbered moneys in the Hawaii large fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund established by section 189-23, Hawaii Revised Statutes, along with all outstanding loan balances and all receipts of principal and interest payments hereafter, shall be transferred to the Hawaii capital loan revolving fund established by section 210-3, Hawaii Revised Statutes. All unencumbered moneys in the Hawaii large fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund on the effective date of this Act shall be transferred to the general fund. Loans for the purchase, construction, renovation, maintenance, and repair of large fishing vessels shall continue to be made under the Hawaii capital loan program established by chapter 210, Hawaii Revised Statutes.

SECTION 8. All encumbered moneys in the Hawaii small fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund established by section 189-43, Hawaii Revised Statutes, along with all outstanding loan balances and all receipts of principal and interest payments hereafter, shall be transferred to the Hawaii capital loan revolving fund established by section 210-3, Hawaii Revised Statutes. All unencumbered moneys in the Hawaii small fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund on the effective date of this Act shall be transferred to the general fund. Loans for the purchase, construction, renovation, maintenance, and repair of small fishing vessels shall continue to be made under the Hawaii capital loan program established by chapter 210, Hawaii Revised Statutes.

SECTION 9. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 1996.

(Approved June 12, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 144**

S.B. NO. 2210

A Bill for an Act Relating to the Hawaii State Public Library System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the public library system needs to be responsive to the rapidly changing field of information and its packaging, customers and their needs, and the efficient application of taxpayer and donated moneys and properties. In April 1991, the board of education approved the state library’s “Customer Satisfaction: A Master Plan for Public Libraries” to improve customer services, customer access to information, private funding support, greater revenue from a variety of services, employee morale, and cost control. This master plan led

to the establishment of the project state library innovation model: maximizing employees and revenues (SLIMMER). From SLIMMER, the structural concept of self-directed work teams (SDWT) evolved and this concept was placed into pilot operation at five libraries during fiscal year 1993-1994.

The legislature further finds that to fully implement Project SLIMMER and SDWT, legislation was enacted to: authorize the library to establish enhanced services and charge fees to be used to support library operations; create a literacy and lifelong learning program and a public-private partners for literacy trust fund; and establish a Hawaii state library foundation, a nonprofit private foundation to operate a trust fund consisting of donations from all types of private contributions.

The purpose of this Act is to continue the initiatives started in 1991 with Project SLIMMER. Through Project SLIMMER, the state library system has developed a program to provide revenues for enhanced services that are in addition to those currently mandated and supported by state tax revenues. Further, the library system has chosen to work in partnership with the private sector to solicit donations that will also serve to enhance the overall library services available to the public. Thus, it is the belief of the legislature that if the library system is willing to generate supplemental revenues through its own innovations such as Project SLIMMER, the library system should be given statutory authority to fully implement Project SLIMMER and related innovations.

SECTION 2. Act 327, Session Laws of Hawaii 1993, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect upon its approval and shall be repealed on July 1, [1996.] 1999.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 30, 1996.

(Approved June 12, 1996.)

## ACT 145

S.B. NO. 2220

A Bill for an Act Relating to Burial Plots.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to permit the perpetuation of the family tradition of burying on one's own property, family members desiring to be buried in family burial plots.

SECTION 2. Chapter 441, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§441- **Family burial plots.** Owners of residential or agricultural property who use or intend to use their property for the interment of family members, shall be exempt from the provisions of this chapter; provided:

- (1) Burial plots on the owner's property shall be offered to family members only;

- (2) Burial plots shall not be sold or transferred to anyone, except as part of a sale or transfer of all or a substantial portion of the property; and
- (3) Any subsequent disinterment of any person interred on the property shall be conducted as though the property were cemetery property under section 6E-41."

SECTION 3. Section 441-9, Hawaii Revised Statutes, is amended to read as follows:

**"§441-9 Dedicated property exempt from improvement assessment.** All property dedicated to cemetery purposes pursuant to this chapter, including roads, alleys, and walks, but excluding property on which there are family burial plots, shall be exempt from public improvement assessments."

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

**Note**

- 1. Edited pursuant to HRS §23G-16.5.

**ACT 146**

S.B. NO. 2381

A Bill for an Act Relating to Missing Children.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 707-726, Hawaii Revised Statutes, is amended to read as follows:

**"§707-726 Custodial interference in the first degree.** (1) A person commits the offense of custodial interference in the first degree if:

- (a) [A relative of a minor:] The person:
  - (i) Intentionally or knowingly violates a court order issued pursuant to chapter 586, or [the person] intentionally or knowingly takes, entices, conceals, or detains the minor from any other person who has a right to custody pursuant to a court order, judgment, or decree; and
  - (ii) Removes the minor from the State; [or]
- (b) [The relative] The person intentionally or knowingly takes, entices, conceals, or detains a [child] minor less than eleven years old from that [child's] minor's lawful custodian, knowing that the [relative] person had no right to do so[.]; or
- (c) The person, in the absence of a court order determining custody or visitation rights, intentionally or knowingly takes, detains, conceals, or entices away a minor with the intent to deprive another person or a public agency of their right to custody, and removes the minor from the State.

(2) It is an affirmative defense to a prosecution under this section that the person had "good cause" for the violation of a court order issued pursuant to chapter 586, for the taking, detaining, concealing, or enticing away of the minor, or for removing the minor from the State; provided that the person asserting the

affirmative defense filed a report with the clerk of the family court detailing the whereabouts of the minor, the person who took, enticed, detained, concealed, or removed the minor or child, and the circumstances of the event as soon as the filing of the report was practicable; and provided further that the person asserting the affirmative defense also filed a request for a custody order as soon as the filing of the request was practicable.

As used in this section, “good cause” means a good faith and reasonable belief that the taking, detaining, concealing, enticing away, or removing of the minor is necessary to protect the minor from immediate bodily injury.

(3) The identity and address of the person reporting under subsection (2) shall remain confidential unless the information is released pursuant to a court order.

[(2)] (4) Custodial interference in the first degree is a class C felony.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 147

S.B. NO. 2459

A Bill for an Act Relating to Emergency Ambulance Service Personnel.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 453, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

**“§453- Limited temporary certification.** (a) The board of medical examiners shall approve limited temporary certification of an applicant under this section if the applicant:

- (1) Has graduated from a board or state-approved training program as developed and promulgated by the United States Department of Transportation;
- (2) Has passed the written and practical examinations of the National Registry of Emergency Medical Technicians for that level of practice;
- (3) Holds a current certificate from the National Registry of Emergency Medical Technicians for that level of practice;
- (4) Has submitted a letter verifying acceptance into a period of peer review as an emergency medical technician or mobile intensive care technician;
- (5) Has filed a completed application with the board; and
- (6) Has paid all the required fees.

(b) Limited certification of any applicant shall be restricted to a maximum of one year.

(c) All privileges under this section shall automatically cease if the applicant receives certification under section 453-32 or 453-32.1 or is no longer participating in a period of peer review.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 148

S.B. NO. 2471

A Bill for an Act Relating to Time Limitations.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 701-108, Hawaii Revised Statutes, is amended to read as follows:

**“§701-108 Time limitations.** (1) A prosecution for murder, murder in the first and second degrees, attempted murder, and attempted murder in the first and second degrees may be commenced at any time.

(2) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:

- (a) A prosecution for manslaughter where the death was not caused by the operation of a motor vehicle must be commenced within ten years after it is committed;
- (b) A prosecution for a class A felony must be commenced within six years after it is committed;
- (c) A prosecution for any other felony must be commenced within three years after it is committed;
- (d) A prosecution for a misdemeanor or<sup>1</sup> parking violation must be commenced within two years after it is committed;
- (e) A prosecution for a petty misdemeanor or a violation other than a parking violation must be commenced within one year after it is committed.

(3) If the period prescribed in subsection (2) has expired, a prosecution may nevertheless be commenced for:

- (a) Any offense an element of which is either fraud or a breach of fiduciary obligation within [two] three years after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is oneself not a party to the offense, but in no case shall this provision extend the period of limitation [otherwise applicable] by more than six years from the expiration of the period of limitation prescribed in subsection (2); and
- (b) Any offense based on misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within two years thereafter, but in no case shall this provision extend the period of limitation [otherwise applicable] by more than three years from the expiration of the period of limitation prescribed in subsection (2) .

(4) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(5) A prosecution is commenced either when an indictment is found or a complaint filed, or when an arrest warrant or other process is issued, provided that such warrant or process is executed without unreasonable delay.

(6) The period of limitation does not run:

- (a) During any time when the accused is continuously absent from the State or has no reasonably ascertainable place of abode or work within the State, but in no case shall this provision extend the period of limitation [otherwise applicable] by more than [three] four years from the expiration of the period of limitation prescribed in subsection (2) ;
- (b) During any time when a prosecution against the accused for the same conduct is pending in this State; or
- (c) For any felony offense under chapter 707, part V or VI, during any time when the victim is alive and under eighteen years of age.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

**Note**

- 1. Prior to amendment “a” appeared here.

**ACT 149**

S.B. NO. 2502

A Bill for an Act Relating to Real Estate Brokers and Salespersons.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 467-11.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Prior to the license renewal of a real estate broker or real estate salesperson, the licensee shall provide the commission with proof of having attended ten hours of continuing education or its equivalent as determined by the commission during the two-year period preceding the application for renewal. Upon individual application and payment of the proper fee, the commission shall waive this requirement for the following reasons:

- (1) The licensee has [been licensed in Hawaii on an active status for twenty or more years;], for twenty or more years.;
  - (A) Held a continuously active Hawaii real estate broker’s or real estate salesperson’s license; and
  - (B) Been employed full-time as a real estate broker or real estate salesperson;  
including during the three consecutive licensing bienniums immediately preceding the application for renewal;
- (2) The licensee, as a trustee of a Hawaii [private or] charitable trust, [is] has been involved in real estate[;] as a full-time occupation for the past licensing biennium preceding the application for renewal;
- (3) The licensee, as an active Hawaii licensed attorney or an active Hawaii licensed accountant, [is] has been involved in real estate[; and] as a full-time occupation for the past licensing biennium preceding the application for renewal; or



- (4) The licensee, as a participant in Hawaii public [or community] service [at any time during the renewal period to which the waiver applies or eight years of such service, is], has been involved in real estate or real estate laws[.] for the past four consecutive licensing bienniums immediately preceding the application for renewal; provided that a licensee appointed to the commission is excluded.

Failure to satisfy the continuing education requirement by the license expiration date shall result in the license being automatically placed on an “inactive” status.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 150

S.B. NO. 2532

A Bill for an Act Relating to Nurses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 457-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Nurse” means a person licensed under this chapter or a person who holds a license under the laws of another state or territory of the United States that is equivalent to a license under this chapter.”

SECTION 2. Section 457-7, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Any person who holds a license to practice nursing as a registered nurse in this State shall use the title ‘Registered Nurse’ and the abbreviation ‘R.N.’. No other person shall assume the title ‘nurse’ or in any manner imply that the person is a nurse except as provided in sections 457-8 and 457-8.5 or use the abbreviation ‘R.N.’ or any other words, letters, signs, or devices to indicate that the person using the same is a registered nurse.”

SECTION 3. Section 457-8, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Any person who holds a license to practice nursing as a licensed practical nurse in this State shall use the title ‘Licensed Practical Nurse’ and the abbreviation ‘L.P.N.’. No other person shall assume the title ‘nurse’ or in any manner imply that the person is a nurse except as provided in sections 457-7 and 457-8.5 or use the abbreviation ‘L.P.N.’ or any other words, letters, signs, or devices to indicate that the person using the same is a licensed practical nurse.”

SECTION 4. Section 457-8.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any person who has been recognized by the board as an advanced practice registered nurse shall use the title “Advanced Practice Registered Nurse” and the abbreviation “A.P.R.N.”, or specialty title and abbreviation in accordance with rules adopted by the board. No other person shall assume the title “nurse” or in any manner imply that the person is a nurse except as provided in sections 457-7 and 457-8 or use the abbreviation “A.P.R.N.” or any other words, letter, sign, or device to indicate that the person using the same is an advanced practice registered nurse.”

SECTION 5. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 151

S.B. NO. 2548

A Bill for an Act Relating to Landowners’ Liability.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Findings and purpose. The legislature finds that encouraging the public to engage in recreational activities makes for healthier citizens and allows everyone to enjoy Hawaii’s natural resources. In 1969, when the legislature enacted chapter 520, Hawaii Revised Statutes, to encourage wider access to lands and waters for hunting, fishing, and other activities, the intent was to make access easier and limit landowners’ liability.

The purpose of this Act is to clarify the liability of an owner of land so that a landowner whose land is being accessed in order to reach property used for recreational purposes would also have limited liability, where the access is required by the county or state.

SECTION 2. Section 520-4, Hawaii Revised Statutes, is amended to read as follows:

“**[[§520-4]] Liability of owner limited.** (a) Except as specifically recognized by or provided in section 520-6, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:

- (1) Extend any assurance that the premises are safe for any purpose.
- (2) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.
- (3) Assume responsibility for or incur liability for any injury to person or property caused by an act of omission or commission of such persons.

(b) An owner of land who is required or compelled to provide access or parking for such access through or across the owner’s property because of state or county land use, zoning, or planning law, ordinance, rule, ruling, or order, to reach property used for recreational purposes, shall be afforded the same protection as to such access, including parking for such access, as an owner of land who invites or permits any person to use that owner’s property for recreational purposes under subsection (a).”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

ACT 152

S.B. NO. 2659

A Bill for an Act Relating to Wildlife and Game Management.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 183D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§183D- General administrative penalties.** (a) Except as otherwise provided by law, the board is authorized to set, charge, and collect administrative fines or bring legal action to recover administrative costs of the department or payment for damages or for the cost to correct damages resulting from a violation of subtitle 4 of title 12 or any rule adopted thereunder. The administrative fines shall be as follows:

- (1) For a first violation, by a fine of not more than \$10,000;
- (2) For a second violation within five years of a previous violation, by a fine of not more than \$15,000; and
- (3) For a third or subsequent violation within five years of the last violation, by a fine of not more than \$25,000.

(b) In addition, an administrative fine of up to \$5,000 may be levied for each specimen of wildlife taken, killed, injured, or damaged in violation of subtitle 4 of title 12 or any rule adopted thereunder.

(c) Any criminal action against a person for any violation of subtitle 4 of title 12 or any rule adopted thereunder shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of subtitle 4 of title 12 or any rule adopted thereunder shall not be deemed to preclude the State from pursuing any criminal action against that person."

SECTION 2. Section 183D-5, Hawaii Revised Statutes, is amended to read as follows:

**"§183D-5 Penalties.** (a) Any person violating section 183D-21, [183D-22, 183D-23, 183D-24,] 183D-25, 183D-33, or 183D-63 shall be guilty of a petty misdemeanor, and upon conviction thereof, shall be punished as follows:

- (1) For a first conviction, by a mandatory fine of not less than \$50 nor more than [\$500] \$1,000, or imprisonment of not more than thirty days, or both;
- (2) For a second conviction within five years of a previous conviction, by a mandatory fine of not less than [\$150] \$250 nor more than [\$500] \$1,000, or by imprisonment of not more than thirty days, or both, and all firearms used in the commission of such violations shall be considered contraband to be forfeited to and disposed of by the State; and
- (3) For a third or subsequent conviction within five years of the first two or more convictions, by a mandatory fine of not less than [\$300] \$1,000 [nor more than \$500], or by imprisonment of not more than thirty days, or both, and all firearms used in the commission of such violations shall

be considered contraband to be forfeited to and disposed of by the State.

(b) Any person violating section [183D-2, 183D-3,] 183D-26, 183D-27, [183D-31,] 183D-32, 183D-62, or 183D-64 shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as follows:

- (1) For a first conviction by a mandatory fine of not less than \$100 nor more than [\$1,000] \$2,000, or by imprisonment of not more than one year, or both;
- (2) For a second conviction within five years of a previous conviction, by a mandatory fine of not less than [\$250] \$500 nor more than [\$1,000] \$2,000, or by imprisonment of not more than one year, or both, and all firearms used in the commission of such violations shall be considered contraband to be forfeited to and disposed of by the State; and
- (3) For a third or subsequent conviction within five years of the first two or more convictions, by a mandatory fine of not less than [\$500] \$2,000 [nor more than \$1,000], or by imprisonment of not more than one year, or both, and all firearms used in the commission of such violations shall be considered contraband to be forfeited to and disposed of by the State.

(c) Any person who violates section [183D-34,] 183D-35, 183D-36, 183D-37, 183D-38, 183D-39, 183D-40, [183D-41,] or 183D-42 shall be guilty of a petty misdemeanor, and upon conviction thereof, shall be fined not [more] less than [\$500] \$100 nor more than \$1,000 or imprisoned not more than thirty days, or both.

(d) In addition to any other penalty imposed under this section, a mandatory fine of [\$25] \$100 shall be levied for each bird illegally taken under this chapter and a mandatory fine of [100] \$500 shall be levied for each mammal illegally taken under this chapter.

(e) Any person who is convicted of violating any of the game laws of the State shall immediately have their hunting license forfeited and any person convicted for a second offense shall not be granted a license to hunt for a period of three years after the date of the second conviction.

(f) The court, in lieu of the actual cash payment of any mandatory fine, may allow the defendant to perform such community service as directed by the department of land and natural resources at the rate of one hour of service for every \$10 of mandatory fine imposed.

(g) Any criminal action against a person for any violation of this section shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of subtitle 4 of title 12 or any rule adopted thereunder shall not be deemed to preclude the State from pursuing any criminal action against that person."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 153

S.B. NO. 2682

A Bill for an Act Relating to Plant and Non-domestic Animal Quarantine.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 150A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§150A- User fees.** Fees may be assessed for the processing and issuance of import permits issued by the department and for inspections related to import permit conditions as established by rule.”

SECTION 2. Section 150A-2, Hawaii Revised Statutes, is amended by amending the definitions of “algae”, “bacteria”, “fungus”, and “import” to read as follows:

““Algae” means any plant containing chlorophyll, which lacks true roots, stems, and leaves, and typically inhabits moist habitats, except those algae on or in humans or animals in Hawaii and those in or on processed foods, beverages, or pharmaceuticals, and those in certain microbial products or used as food or for food preparation as specified by rule.

“Bacteria” means any prokaryotic or archaebacterial organism, except those bacteria on or in humans or animals in Hawaii, those in or on processed foods, beverages, or pharmaceuticals, and those in certain microbial products or used as food or for food preparation as specified by rule.

“Fungus” means all nonchlorophyll-bearing thallophytes, except those fungi on or in humans or animals in Hawaii, those on or in processed foods, beverages, or pharmaceuticals, and those in certain microbial products or used as food or for food preparation as specified by rule.

“Import” means shipment to the State [for the purpose of entry] from any point outside of the State.”

SECTION 3. Section 150A-5.5, Hawaii Revised Statutes, is amended to read as follows:

**“§150A-5.5 What constitutes importation.** (a) The landing of any article for the purpose of inspection or quarantine [is not, nor] shall [it] not be construed to [be, an importation in the sense of giving] give the article any status or the owner any right incident to articles which have actually been passed and allowed into the State.

(b) In legal effect, articles landed for the purpose of inspection or quarantine shall be construed to be still [without] outside the State seeking entry, and shall not, in whole or in part, be considered suitable for [importation] entry into the State unless a tag, label, or stamp has been affixed to the article, its container, or its delivery order by the inspector as provided in section 150A-5(9)[.], except that articles quarantined in the biocontrol containment facilities of the department or of other government agencies engaged in joint projects with the department may be released upon issuance of a permit approved by the board.

(c) Notwithstanding subsections (a) and (b), the import of articles in violation of this chapter or rules adopted under this chapter may subject the importer to penalty although the articles have not been passed for entry.”

SECTION 4. Section 150A-6, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) No person shall transport, receive for transport, or cause to be transported to the State, for the purpose of debarkation or entry thereinto, any of the following:

- (1) Soil; provided that limited quantities of soil may be imported into the State for experimental or other scientific purposes under permit with conditions prescribed by the department;
- (2) Rocks, plants, plant products, or any article with soil adhering thereto;
- (3) Any live snake, flying fox, fruit bat, Gila monster, injurious insect, or eels of the order Anguilliformes, or any other animal, plant, or micro-organism in any stage of development that is detrimental or potentially harmful to agriculture, horticulture, animal or public health, or natural resources, including native biota, or has an adverse effect on the environment as determined by the board; provided that a government agency may bring into and maintain in the State not more than two live, nonvenomous snakes of the male sex solely for the purpose of exhibition in a government zoo, but only after:
  - (A) The board is presented with satisfactory evidence that the sex of the snakes was established to be male prior to the shipment; and
  - (B) The board gives written approval conditioned upon such terms as the board may deem necessary, which terms shall include the continuing supervision and control by the board, and shall provide that the board may determine the manner in which the snakes shall be disposed of or destroyed.

In case of the death of one or both snakes, the government agency may import and maintain replacements subject to the conditions described in this paragraph; and

- (4) Any live or dead honey bees, or used bee equipment that is not certified by the department to be free of pests; provided that nothing in this paragraph shall be construed to prohibit the importation of bee semen.
- (b) The board shall maintain:
  - (1) A list of conditionally approved animals and microorganisms that require a permit for import into the State;
  - (2) A list of restricted animals and microorganisms that require a permit for both import into the State and possession; and
  - (3) A list of animals and microorganisms that are prohibited entry into the State.

Animals and microorganisms on the lists of conditionally approved and restricted animals and microorganisms shall be imported only by permit issued pursuant to rules, and any violation of the conditions listed on the permit shall be a violation of this section. Any animal or microorganism that is not on the lists of conditionally approved, restricted, or prohibited animals and microorganisms shall be prohibited until the board’s review and determination for placement on one of these lists; provided that the department may issue a special permit on a case by case basis for the importation and possession of an animal or a microorganism that is not on the lists of prohibited, restricted, or conditionally approved animals or microorganisms<sup>1</sup> for the purpose of conducting [medical research, or remediating medical emergencies or agricultural or ecological disasters,] scientific research in a manner that the animal or microorganism will not be detrimental to agriculture, the environment, or humans if the importer of the animal or microorganism can meet permit requirements consistent with Centers for Disease Control and National Institute of Health guidelines or other guidelines as determined by the board[.]; and provided further that the department may issue a short-term special permit on a case by case basis not to exceed ninety days for the importation and possession of an animal that is not on the list of prohibited, restricted, or conditionally-approved animals for the

purpose of filming, performance, or exhibition if the importer of the animal can meet permit and bonding requirements as determined by the board.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 6. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

**Notes**

1. Prior to amendment “,” appeared here.
2. Edited pursuant to HRS §23G-16.5.

**ACT 154**

S.B. NO. 2699

A Bill for an Act Relating to the Establishment of Paternity.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 584, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§584- Expedited process of paternity.** (a) To expedite the establishment of paternity, each public and private birthing hospital or center shall provide unwed parents the opportunity to voluntarily acknowledge the paternity of a child during the period immediately prior to or following the child’s birth. The voluntary acknowledgment of paternity shall be in writing and shall consist of a single form signed under oath by both the natural mother and the natural father. Designated staff members of such facilities shall provide to both the mother and the alleged father, if he is present at the facility:

- (1) Written materials regarding paternity establishment;
- (2) Forms necessary to voluntarily acknowledge paternity;
- (3) A written description of the rights and responsibilities of acknowledging paternity; and
- (4) The opportunity to speak with staff who are trained to provide information and answer questions about paternity establishment.

The completed voluntary acknowledgement forms shall clearly identify the name and position of the staff member who provides information and answers questions of the parents regarding paternity establishment. The provision by designated staff members of the facility of the information required by this section shall not constitute the unauthorized practice of law. Each facility shall send to the department of health the original acknowledgment of paternity containing the Social Security numbers, if available, of both parents, with the information required by the department of health so that the birth certificate issued includes the name of the legal father of the child, which shall be promptly recorded by the department of health.

- (b) The child support enforcement agency shall:
  - (1) Provide to any person or facility the necessary:
    - (A) Materials and forms and a written description of the rights and responsibilities related to voluntary acknowledgment of paternity; and
    - (B) Training, guidance, and written instructions regarding voluntary acknowledgment of paternity;
  - (2) Annually assess each facility’s paternity establishment program; and

- (3) Determine if a voluntary acknowledgment has been filed with the department of health whenever it receives an application for paternity establishment services.

(c) As used in this section:

“Agency” means the child support enforcement agency.

“Birthing center” means any facility outside a hospital that provides maternity services.

“Birthing hospital” means any hospital with licensed obstetric-care units, any hospital licensed to provide obstetric services, or any licensed birthing center associated with a hospital.

“Facility” means a birthing hospital or a birthing center.”

SECTION 2. Section 584-12, Hawaii Revised Statutes, is amended to read as follows:

“§584-12 Evidence relating to paternity. Evidence relating to paternity may include:

- (1) Evidence of sexual intercourse between the mother and the alleged father at any possible time of conception;
- (2) An expert’s opinion concerning the statistical probability of the alleged father’s paternity based upon the duration of the mother’s pregnancy;
- (3) Genetic test results, including blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father’s paternity;
- (4) Medical or anthropological evidence relating to the alleged father’s paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; [and]
- (5) A voluntary, written acknowledgment of paternity that shall create a rebuttable presumption of paternity; and
- [(5)] (6) All other evidence relevant to the issue of paternity of the child.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 155

S.B. NO. 2724

A Bill for an Act Relating to the Code of Financial Institutions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 412, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

### “ARTICLE . INTERSTATE BRANCHING AND BANK MERGERS

§412: -100 Purpose. It is the express intent of this article to permit interstate branching under sections 102 and 103 of the Riegle-Neal Interstate



Banking and Branching Efficiency Act of 1994, Public Law No. 103-328, in accordance with the provisions set forth in this article.

**§412: -101 Definitions.** As used in this article, unless a different meaning is required by the context, the following words and phrases shall have the following meanings:

“Acquisition of a branch” means the acquisition of a branch located in a host state, without engaging in an “interstate merger transaction” as defined in this article.

“Bank” has the meaning set forth in 12 U.S.C. section 1813(h); provided that the term “bank” shall not include any “foreign bank” as defined in 12 U.S.C. section 3101(7), except that the term “bank” shall include any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation.

“Bank holding company” has the meaning set forth in 12 U.S.C. section 1841(a)(1).

“Bank supervisory agency” means:

- (1) Any agency of another state with primary responsibility for chartering and supervising banks; and
- (2) The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to these agencies.

“Branch” means a place of business of a bank, other than its main office, which is open to the public and at which deposits are received and paid. The term does not include an automatic teller machine as defined in section 412:3-501.

“Control” shall be construed consistently with 12 U.S.C. section 1841(a)(2).

“De novo branch” means a branch of a bank located in a host state which:

- (1) Is originally established by the bank as a branch; and
- (2) Does not become a branch of the bank as a result of (A) the acquisition of another bank or a branch of another bank, or (B) the merger, consolidation, or conversion involving any bank or branch.

“Foreign bank” has the meaning set forth in 12 U.S.C. section 3101(7).

“Hawaii bank” means a bank whose home state is Hawaii.

“Hawaii state bank” means a bank chartered under the laws of Hawaii.

“Home state” means:

- (1) With respect to a state bank, the state by which the bank is chartered;
- (2) With respect to a national bank, the state in which the main office of the bank is located; and
- (3) With respect to a foreign bank, the state determined to be the home state of the foreign bank under 12 U.S.C. section 3103(c).

“Home state regulator” means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which the bank is chartered.

“Host state” means a state, other than the home state of a bank, in which the bank maintains, or seeks to establish and maintain a branch.

“Interstate merger transaction” means:

- (1) The merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or
- (2) The purchase of all or substantially all of the assets (including all or substantially all of the branches) of a bank whose home state is different from the home state of the acquiring bank.

“Out-of-state bank” means a bank whose home state is a state other than Hawaii.

“Out-of-state state bank” means a bank chartered under the laws of any state other than Hawaii.

“Resulting bank” means a bank that has resulted from an interstate merger transaction under this article.

“State,” whenever this word is used in its uncapitalized form, means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

**§412: -102 Authority of Hawaii state banks to establish interstate branches by merger.** (a) With the prior approval of the commissioner, a Hawaii state bank may establish and operate one or more branches in a state other than Hawaii, pursuant to an interstate merger transaction in which the Hawaii state bank is the resulting bank.

(b) Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant Hawaii state bank shall comply with and the application shall be processed in accordance with all applicable provisions of this part VI, article 3, of this chapter. The interstate merger transaction may be consummated and the Hawaii state bank may establish and operate the branches outside of Hawaii only after the applicant has received the commissioner’s written approval.

**§412: -103 Authority of Hawaii state banks to establish a de novo interstate branch or acquire an interstate branch.** (a) With the prior approval of the commissioner, any Hawaii state bank may establish and operate a de novo branch or acquire and operate a branch in a state other than Hawaii.

(b) A Hawaii state bank desiring to establish and operate a de novo branch or acquire and operate a branch in another state under this section shall comply with, and the application shall be processed in accordance with sections 412:3-503 and 412:3-505. In acting on the application, the commissioner shall consider the views of the appropriate bank supervisory agencies. The applicant bank may establish and operate the branch when it has received the written approval of the commissioner.

**§412: -104 Authority of out-of-state banks to establish interstate branches in Hawaii by merger.** (a) One or more Hawaii banks may enter into an interstate merger transaction with one or more out-of-state banks under this article, and an out-of-state bank resulting from the transaction may maintain and operate the branches in Hawaii of a Hawaii bank that participated in the transaction, if the conditions and filing requirements of this article are met.

- (b) (1) An interstate merger transaction resulting in the acquisition by an out-of-state bank of a Hawaii state bank, or of all or substantially all of the branches of a Hawaii state bank, shall not be permitted under this article unless the Hawaii state bank shall have been in continuous operation, on the date of such acquisition, for a period of at least five years.
- (2) For purposes of paragraph (1), a Hawaii state bank chartered solely for the purpose of acquiring another Hawaii state bank is considered to have been in existence for the same period as the Hawaii state bank to be acquired, so long as it does not open for business at any time before the acquisition.
- (3) The commissioner may waive the restriction in paragraph (1) in the case of a Hawaii state bank that is subject to, or is in danger of

becoming subject to supervisory action under article 2 of this chapter or, if applicable, the equivalent provisions of federal law.

(c) Any out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a Hawaii state bank shall notify the commissioner of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal bank supervisory agency, and shall submit a copy of that application to the commissioner and pay a filing fee of \$9,000, or a greater amount as the commissioner may establish by rule pursuant to chapter 91. The filing fee shall be non-refundable. Any Hawaii state bank which is a party to an interstate merger transaction shall comply with part VI, article 3, of this chapter to the extent applicable, and with other applicable state and federal laws. If the resulting bank in the interstate merger transaction is an out-of-state state bank, the director of commerce and consumer affairs shall not file the articles of merger until the out-of-state state bank has filed a confirmation in writing by the commissioner of compliance with this section. If the resulting bank in the interstate merger transaction is an out-of-state bank which is a national banking association, the resulting bank shall file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of compliance with this section.

(d) Any out-of-state state bank which shall be the resulting bank in an interstate merger transaction involving a Hawaii bank shall provide satisfactory evidence to the commissioner of compliance with applicable requirements of chapter 415 relating to foreign corporations.

**§412: -105 Prohibition of out-of-state banks to establish a de novo interstate branch or acquire an interstate branch.** (a) An out-of-state bank that does not operate a branch in this State may not establish and operate a de novo branch in this State.

(b) An out-of-state bank that does not operate a branch in this State may not establish and operate a branch in this State through the acquisition of a branch.

(c) Notwithstanding subsection (b), the commissioner may approve the acquisition of a branch by an out-of-state bank in the case of a bank that is subject to, or is in danger of becoming subject to supervisory action under article 2 of this chapter or, if applicable, the equivalent provisions of federal law or the law of the out-of-state bank's home state.

**§412: -106 No concentration limit under Hawaii state law; waiver of federal concentration limits.** (a) There shall be no state deposit cap or concentration limit under the law of this State.

(b) The commissioner may waive, on a case by case basis, the federal statewide concentration limits under section 44(b) of the Federal Deposit Insurance Act; provided that the commissioner shall apply a standard that does not discriminate against out-of-state banks. In granting a waiver, the commissioner shall consider whether the waiver promotes the availability of financial services, the marketability of Hawaii banks, or another public interest. This section shall not affect the applicability, if any, of federal or state antitrust law.

**§412: -107 Powers; additional branches.** (a) An out-of-state state bank which establishes and operates a branch in Hawaii under this article may conduct any activities at the branch that are authorized under the laws of this State for Hawaii state banks chartered under article 5 of this chapter.

(b) A Hawaii state bank may conduct any activities at any branch outside Hawaii that are permissible for a bank chartered by the host state where the branch is located, except to the extent the activities are expressly prohibited by the laws of this

State or by any rule or order of the commissioner applicable to the Hawaii state bank; provided that the commissioner may waive any prohibition if the commissioner determines, by order or rule, that the involvement of out-of-state branches of Hawaii state banks in particular activities would not threaten the safety or soundness of those banks.

(c) An out-of-state bank that has established or acquired a branch in Hawaii under this article may establish or acquire additional branches or other places of business as authorized pursuant to section 412:3-501 in Hawaii to the same extent that any Hawaii bank may establish or acquire a branch or other places of business in Hawaii under applicable federal and state law.

(d) If an out-of-state bank operates two or more branches in Hawaii, the out-of-state bank shall designate one of its branches as its principal office in this State.

**§412: -108 Examinations; periodic reports; cooperative agreements; assessment of fees.** (a) To the extent consistent with subsection (c), the commissioner may examine any branch established and maintained in this State pursuant to this article by an out-of-state state bank as the commissioner deems necessary to determine whether the branch is being operated in compliance with the laws of this State and in accordance with safe and sound banking practices. Sections 412:2-105 and 412:2-200 shall apply to the examinations of the out-of-state state banks in the same manner as to the examinations of Hawaii financial institutions.

(b) The commissioner may require periodic reports regarding any out-of-state bank that operates a branch in Hawaii pursuant to this article. The required reports shall be provided by the bank or by the bank supervisory agency having primary responsibility for the bank. Any reporting requirements prescribed by the commissioner under this subsection shall be (1) consistent with the reporting requirements applicable to Hawaii state banks and (2) appropriate for the purpose of enabling the commissioner to carry out the commissioner's responsibilities under this chapter.

(c) The commissioner may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in Hawaii of an out-of-state state bank, or any branch of a Hawaii state bank in any host state, and the commissioner may accept the parties' reports of examination and reports of investigation in lieu of conducting the commissioner's own examinations or investigations.

(d) The commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a Hawaii state bank or an out-of-state state bank operating a branch in this State pursuant to this article to engage the services of the agency's examiners at a reasonable rate of compensation, or to provide the services of the commissioner's examiners to the agency at a reasonable rate of compensation. Any contract executed under this section shall be exempt from the requirements of chapter 103D.

(e) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in Hawaii of an out-of-state state bank or any branch of a Hawaii state bank in any host state; provided that the commissioner at any time may take action independently if the commissioner deems the action to be necessary or appropriate to carry out the commissioner's responsibilities under this article or to ensure compliance with the laws of this State; provided further that, in the case of an out-of-state state bank, the commissioner shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(f) Each out-of-state state bank that maintains one or more branches in this State may be assessed and, if assessed, shall pay supervisory, examination, and other fees in accordance with the laws of this State and rules of the commissioner. The fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between the parties and the commissioner.

**§412: -109 Enforcement.** If the commissioner determines that a branch maintained by an out-of-state state bank in this State is being operated in violation of any provision of the laws of this State, or that the branch is being operated in an unsafe and unsound manner, the commissioner may take all enforcement actions as the commissioner could take if the branch were a Hawaii state bank; provided that the commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action. The enforcement and supervisory powers of the commissioner contained in parts III to VI, article 2 of this chapter shall apply to an out-of-state state bank to the same extent that the provisions are applicable to a Hawaii financial institution.

**§412: -110 Notice of subsequent merger, etc.** Each out-of-state state bank that operates a branch in this State pursuant to this article, or the home state regulator of the bank, shall give at least thirty days' prior written notice (or, in the case of an emergency transaction, shorter notice as is consistent with applicable state or federal law) to the commissioner of any merger, consolidation, or other transaction that would cause a change of control with respect to the out-of-state state bank or any bank holding company that controls the bank, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended, 12 U.S.C. section 1817(j), or the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. section 1841 *et seq.*, or any successor statutes thereto."

SECTION 2. Chapter 412, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

**"ARTICLE . THE HAWAII INTERNATIONAL BANKING ACT**

**PART I. GENERAL**

**§412: -100 Title and purpose.** (a) This article shall be known and may be cited as the Hawaii International Banking Act.

(b) This article is intended generally to provide for state regulation of the participation by foreign banks in the financial markets of this State.

(c) Consistent with the federal International Banking Act, the Bank Holding Company Act, the Federal Deposit Insurance Act, and the Interstate Banking and Branching Efficiency Act, this article is intended specifically:

- (1) To authorize banking activities and operations, under state licenses issued by the commissioner, of direct branch and agency offices in this State of foreign banks, generally under terms and conditions not less favorable than the terms and conditions under which the activities and operations may be conducted by federal branch or agency offices of foreign banks in the United States, and to set forth a statutory framework for the licensing, regulation, and supervision of the State-licensed offices of foreign banks by the commissioner to assure the safe and

sound operation of the offices that are licensed under the laws of this State;

- (2) To authorize representative offices in this State of foreign banks, and to set forth statutory provisions governing the licensing and supervision of the representative offices by the commissioner; and
- (3) To ensure that the banking laws and rules of this State otherwise apply to foreign banks in a manner consistent with the laws and policies of the United States governing the operations in this country of foreign banks.

**§412: -101 Application to existing foreign banks.** (a) The licenses of foreign banks to open and maintain agency offices and representative offices in this State which were granted before and which are in effect on June 1, 1997, are not invalidated by the enactment of this article nor by any change made in the requirements for licensing of foreign bank offices, nor by the repeal of the laws under which they were licensed.

(b) The provisions of this article shall apply to all agency and representative offices of foreign banks which were licensed under previous laws of this State and which are in operation on June 1, 1997, except as provided in this section.

(c) With the enactment of this article, non-depository agency offices of foreign banks which were licensed under previous laws of this State and are in operation on June 1, 1997, shall have all of the powers and authority of a Hawaii state agency under this article, except that the non-depository agency office shall not accept any deposits pursuant to section 412: -208, and as long as deposits are not accepted, the non-depository agency office shall not be required to comply with section 412: -213. Notwithstanding the foregoing provision, nothing shall prohibit the foreign bank operating a non-depository agency office from filing an application under section 412: -205 to amend its license.

**§412: -102 Definitions.** As used in this article:

“Affiliate” has the same meaning as set forth in section 2(k) of the Bank Holding Company Act (12 U.S.C. 1841(k)).

“Agency,” when used in reference to an office of a foreign bank, shall have the same meaning as is set forth in section 1(b)(1) of the federal International Banking Act (12 U.S.C. 3101(1)).

“Bank” means any bank as defined in: section 2(c) of the Bank Holding Company Act (12 U.S.C. 1841(c)); section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)(1)), other than a branch of a foreign bank; or, as the context may require, in section 412:5-100. The term shall not in any event include a foreign bank or a branch or agency of a foreign bank.

“Bank holding company” has the same meaning as set forth in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)).

“Bank Holding Company Act” means the federal Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 et seq.).

“Bank supervisory agency” means:

- (1) The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to these agencies;
- (2) Any agency of another state with primary responsibility for chartering and supervising banks; and
- (3) Any agency of a country (including any colonies, dependencies, possessions, or political subdivisions thereof) other than the United States with primary responsibility for chartering and supervising banks.

“Branch,” when used in reference to an office of a foreign bank, has the same meaning as is set forth in section 1(b)(3) of the federal International Banking

Act (12 U.S.C. 3101(3)), and when used in reference to an office of a bank as defined in this section, shall have the same meaning as is set forth in section 3(o) of the Federal Deposit Insurance Act (12 U.S.C. 1813(o)).

“Control” shall be construed consistently with the provisions of section 2(a)(2) of the Bank Holding Company Act (12 U.S.C. 1841(a)(2)).

“Depository institution” means any institution that is included for any purpose within the definitions of “insured depository institution” as set forth in section 3(c)(2) and (3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2) and (3)).

“Federal agency” means an agency of a foreign bank that is licensed by the Comptroller of the Currency pursuant to section 4 of the federal International Banking Act (12 U.S.C. 3102).

“Federal branch” means a branch of a foreign bank that is licensed by the Comptroller of the Currency pursuant to section 4 of the federal International Banking Act (12 U.S.C. 3102).

“Federal Deposit Insurance Act” means the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813 et seq.).

“Federal International Banking Act” means the federal International Banking Act of 1978, as amended (12 U.S.C. 3101 et seq.).

“Foreign bank” means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, that engages directly in the business of banking. The term includes foreign commercial banks, foreign merchant banks, and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where the foreign institutions are organized or operating.

“Hawaii bank” means a Hawaii state bank or a Hawaii national bank.

“Hawaii national bank” means a national banking association having its headquarters within Hawaii.

“Hawaii representative office” means a representative office that is located in this State.

“Hawaii state agency,” when used in reference to an office of a foreign bank, means an agency of a foreign bank that is located in this State and licensed pursuant to this chapter, part II, of this article.

“Hawaii state bank” means a bank organized under the laws of Hawaii.

“Hawaii state branch,” when used in reference to an office of a foreign bank, means a branch of a foreign bank that is located in this State and licensed pursuant to this chapter, part II, of this article.

“Home state” has the same meaning in reference to national banks, state banks, and bank holding companies as is set forth in section 44(f)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1831u), and the same meaning in reference to foreign banks as is set forth in section 5(c) of the federal International Banking Act (12 U.S.C. 3103(c)).

“Interstate Banking and Branching Efficiency Act” means the federal Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103-328, 108 Stat. sections 2338 to 2381 (September 29, 1994, codified at various sections of Title 12, United States Code).

“Interstate branch” means a branch of a bank or a branch of a foreign bank, as the context may require, which is established after September 29, 1994, pursuant to the authority contained in the Interstate Banking and Branching Efficiency Act, outside the home state of the bank or foreign bank. In the case of a foreign bank, the term shall not include a limited branch.

“Limited branch” means a branch of a foreign bank that accepts only those deposits as would be permissible for a corporation organized under section 25A of

the Federal Reserve Act in accordance with section 5(a)(7) of the federal International Banking Act (12 U.S.C. 3103(a)(7)).

"Out-of-state bank" means a bank, the home state of which is a state other than Hawaii.

"Out-of-state bank holding company" means a bank holding company, the home state of which is a state other than Hawaii.

"Out-of-state foreign bank" means a foreign bank, the home state of which is a state other than Hawaii.

"Representative office" has the same meaning as is set forth in section 1(b)(15) of the federal International Banking Act (12 U.S.C. 3101(15)).

"State," whenever this word is used in its uncapitalized form, has the same meaning as is set forth in section 3(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)(3)).

"Subsidiary" has the same meaning as set forth in section 2(d) of the Bank Holding Company Act (12 U.S.C. 1841(d)).

"United States," when used in a geographical sense, means the several states, the District of Columbia, Puerto Rico, Guam, American Samoa, the American Virgin Islands, the Trust Territory of the Pacific Islands, and any other territory of the United States; and, when used in a political sense, means the federal government of the United States.

## PART II. DIRECT BRANCH, AGENCY, AND REPRESENTATIVE OFFICES OF FOREIGN BANKS

**§412: -200 Purpose.** Consistent with the federal International Banking Act, the Bank Holding Company Act, the Federal Deposit Insurance Act, and the Interstate Banking and Branching Efficiency Act, this part is intended:

- (1) To authorize banking activities and operations, under state licenses issued by the commissioner, of direct branch and agency offices in this State of foreign banks, generally under terms and conditions not less favorable than the terms and conditions under which the activities and operations may be conducted by federal branch or agency offices of foreign banks in the United States, and to set forth a statutory framework for the licensing, regulation, and supervision of state-licensed offices of foreign banks by the commissioner to assure the safe and sound operation of the offices that are licensed under the laws of this State; and
- (2) To authorize representative offices in this State of foreign banks, and to set forth statutory provisions governing the licensing and supervision of these offices by the commissioner.

**§412: -201 Branches and agencies of foreign banks; necessity of licensure.** (a) No foreign bank shall transact business in this State except at a Hawaii state branch or Hawaii state agency which it is licensed to establish and maintain pursuant to, and at which it conducts the activities as are permitted by this article.

(b) Subsection (a) shall not be deemed to prohibit:

- (1) Any foreign bank that establishes and maintains a federal agency or federal branch in this State from transacting at the federal agency or federal branch any business it may be authorized to transact under applicable federal laws and regulations;
- (2) Any foreign bank that does not maintain a Hawaii state branch or Hawaii state agency from making in this State loans secured by liens on real or personal property located in this State or enforcing the loans in this State; or



- (3) Any foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation, from establishing and operating an interstate branch in this State in its capacity as a "state bank" as defined in the Federal Deposit Insurance Act, pursuant to the authorities contained in that Act and in the laws of this State.

(c) For purposes of subsection (a), no foreign bank shall be deemed to be transacting business in this State merely because a subsidiary or affiliate transacts business in this State, including business that any depository institution subsidiary or affiliate may lawfully conduct in this State, as an agent for the foreign bank in accordance with and to the extent authorized by the laws of this State and applicable rules or orders of the commissioner.

**§412: -202 Application to establish and maintain a branch or agency; contents.** A foreign bank, in order to procure a license under this article to establish and maintain a Hawaii state branch or Hawaii state agency shall submit an application to the commissioner, together with the application fee prescribed in section 412: -206. The application shall contain:

- (1) The same information as required by the Board of Governors of the Federal Reserve System for an application to establish a branch or agency, as the case may be, in the United States;
- (2) A statement under oath appointing an agent in this State for receipt of service of process in accordance with section 415-113 if the license is granted; and
- (3) Any additional information that the commissioner may require.

**§412: -203 Application to establish and maintain a branch or agency; manner of filing and determination.** (a) A foreign bank making an application under this article for a license to establish and maintain a Hawaii state branch or Hawaii state agency shall deliver to the commissioner:

- (1) Three duplicate originals of the foreign bank's application, or a greater number as the commissioner may require by rule; and
  - (2) Three copies of its charter or articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the country of the foreign bank's organization, or a greater number of copies as the commissioner may require by rule. If the charter, articles of incorporation, or amendments are in a foreign language, three copies (or a greater number of copies as the commissioner may require by rule) of an English translation of the documents under the oath of the translator shall accompany the charter, articles of incorporation, or amendments.
- (b) The commissioner shall issue a license to a foreign bank to establish and maintain a Hawaii state branch or Hawaii state agency if the commissioner finds that:

- (1) The foreign bank is in good standing under the laws of the country in which it is organized and is in sound financial condition;
- (2) The management of the foreign bank and the proposed management of the Hawaii state branch or Hawaii state agency are of good moral character, competent, and sufficiently experienced;
- (3) The convenience and needs of persons to be served by the proposed Hawaii state branch or a Hawaii state agency will be promoted; and
- (4) The foreign bank satisfies any other standards that the commissioner may establish by rule.

(c) In considering whether a foreign bank is in sound financial condition for the purposes of subsection (b), the commissioner may consider the length of time the foreign bank has engaged in the banking business, the asset size of the bank, and any other criteria which the commissioner deems relevant. The commissioner may presume, in the absence of creditable evidence to the contrary, that a foreign bank that has total assets having an aggregate value in United States currency of \$10,000,000,000 or more and that has engaged in the banking business for at least ten years prior to filing an application pursuant to this article is in sound financial condition.

(d) In considering whether the management of the foreign bank and the proposed management of the Hawaii state branch or Hawaii state agency is of good moral character for the purposes of subsection (b), the commissioner may presume that in the absence of creditable evidence to the contrary, the management is of good moral character. The presumption may be rebutted by evidence to the contrary, including, but not limited to a finding that a person has:

- (1) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;
- (2) Consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty;
- (3) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;
- (4) Wilfully made or caused to be made in any application or report filed with the commissioner, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has wilfully omitted to state in any application or report any material fact which was required to be stated therein; or
- (5) Wilfully committed any violation of, or has wilfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this chapter or of any rule or order issued under this chapter.

(e) If the commissioner approves the application of the foreign bank for a license to establish and maintain a Hawaii state branch or Hawaii state agency, the foreign bank shall then provide satisfactory evidence to the commissioner of compliance with the applicable requirements of chapter 415 relating to foreign corporations. The commissioner shall then:

- (1) Endorse on each document filed as part of the application the word "Filed", and the date of the filing thereof and return to the foreign bank a copy of each document so endorsed;
- (2) File in the commissioner's office one of the originals of the application and copies of the charter or articles of incorporation and amendments thereto; and
- (3) Issue a license to establish and maintain a Hawaii state branch or Hawaii state agency to the foreign bank.

(f) Each license issued to a foreign bank to establish and maintain a Hawaii state branch or Hawaii state agency shall state fully the name of the foreign bank to which the license is issued, and any other information as the commissioner may require.

(g) The commissioner may waive some of the requirements, procedures, and standards applicable to applications to establish additional intrastate Hawaii state branches or Hawaii state agencies if the foreign bank has already established an initial Hawaii state branch or Hawaii state agency.

(h) If a foreign bank operates two or more Hawaii state branches or Hawaii state agencies, the foreign bank shall designate one of the offices as its principal office in this State.

**§412: -204 Denial of license.** If the commissioner is not satisfied that the foreign bank meets all the criteria set forth for approval, the commissioner shall issue a written decision denying the application. A foreign bank which is denied approval may request a hearing before the commissioner in accordance with chapter 91. Any final decision of the commissioner denying a foreign bank a license may be appealed to the circuit court as provided in chapter 91.

**§412: -205 Amended license to establish and maintain a branch or agency.** (a) A foreign bank that is licensed to establish and maintain a Hawaii state branch or Hawaii state agency shall secure an amended license if it changes its corporate name, changes the duration of its corporate existence, or desires to pursue in this State other or additional purposes than those set forth in its prior application for a license under this article, by making application therefor to the commissioner.

(b) The requirements with respect to the form and contents of an application under subsection (a), the manner of its execution, the filing of triplicate originals thereof with the commissioner, the payment of an application fee, the issuance of an amended license, and the effect thereof shall be the same as in the case of an initial application for a license to establish and maintain a Hawaii state branch or Hawaii state agency.

**§412: -206 Application fees.** Upon applying to the commissioner under this article for an initial license to establish and maintain a Hawaii state branch or Hawaii state agency, a foreign bank shall pay to the commissioner an application fee of \$9,000 or a greater amount as the commissioner shall establish by rule pursuant to chapter 91. For an application to establish additional branches or agencies, the foreign bank shall pay an application fee of \$1,500 or a greater amount as may be established by rule. For an application to amend a license, the foreign bank shall pay an application fee of \$1,500 or a greater amount as may be established by rule. All application fees shall be non-refundable.

**§412: -207 No concurrent maintenance of federal branches or agencies.** (a) No foreign bank that is licensed under this article to establish and maintain a Hawaii state branch or Hawaii state agency shall concurrently maintain a federal branch or federal agency in this State.

(b) No foreign bank that maintains a federal branch or federal agency in this State shall concurrently be licensed under this article to maintain a Hawaii state branch or Hawaii state agency.

**§412: -208 Powers of branch and agency.** (a) Except as otherwise specifically provided in this article or in rules or orders adopted by the commissioner, and notwithstanding any other law or rule of this State to the contrary, operations of a foreign bank at a Hawaii state branch or Hawaii state agency shall be conducted with the same rights, privileges, and powers as a Hawaii state bank at the location and shall be subject to all the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply under the laws of this State to a Hawaii state bank doing business at the same location.

(b) Among other exceptions to subsection (a) that may be required or authorized by the commissioner pursuant to this part:

- (1) A Hawaii state branch shall not accept, from individuals who are citizens or residents of the United States, deposits (other than credit

balances that are incidental to or arise out of its exercise of other lawful banking powers) of less than \$100,000, except to the extent that the deposits are determined by the Federal Deposit Insurance Corporation not to constitute "domestic retail deposit activities requiring deposit insurance protection" within the meaning of section 6 of the federal International Banking Act (12 U.S.C. 3104); provided that, a Hawaii state branch of a bank organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation, shall not be subject to the foregoing limitation on domestic retail deposit taking;

- (2) A Hawaii state agency shall not accept any deposits except:
  - (A) Deposits of a foreign nation, its political subdivisions, agencies, or instrumentalities; and
  - (B) Deposits of persons who reside, are domiciled and maintain their principal place of business in a foreign nation, and are not citizens of the United States;
- (3) A Hawaii state branch or Hawaii state agency shall not be required to maintain federal deposit insurance under any law, rule, or order of this State that requires Hawaii state banks and other depository institutions to maintain federal deposit insurance, and the commissioner, by rule or order, may exclude or exempt uninsured Hawaii state branches and Hawaii state agencies from, or otherwise modify the applicability to uninsured Hawaii state branches and Hawaii state agencies of, any law or rule of this State that is generally applicable to insured Hawaii state banks, or that would otherwise be applicable to an insured Hawaii state bank doing business at the same location, as the commissioner may deem necessary or desirable, taking into account applicable limitations on the retail deposit-taking powers and privileges of Hawaii state branches and Hawaii state agencies;
- (4) A foreign bank which is licensed to establish and maintain a Hawaii state branch or Hawaii state agency shall not engage in fiduciary activities at its Hawaii office;
- (5) Any limitation or restriction based on the capital stock and surplus of a Hawaii state bank shall be deemed to refer, as applied to a Hawaii state branch or Hawaii state agency, to the dollar equivalent of the capital stock and surplus of the foreign bank, and if the foreign bank has more than one Hawaii state branch or Hawaii state agency in this State, the business transacted by all the Hawaii state branches and Hawaii state agencies shall be aggregated in determining compliance with the limitation; and
- (6) The commissioner may adopt any additional or modify the applicability of any existing standards, conditions, or requirements, by rule or order, as the commissioner may deem necessary to ensure the safety and soundness and the protection of creditors of the operations of branches and agencies of foreign banks in this State.

**§412: -209 Filing of amendments to articles of incorporation.** A foreign bank that is licensed to maintain a Hawaii state branch or Hawaii state agency, whenever its articles of incorporation are amended, shall forthwith file in the office of the commissioner a copy of the amendment duly authenticated by the proper officer of the country of the foreign bank's organization, but the filing thereof may not of itself enlarge or alter the purpose or purposes for which the foreign bank is authorized to pursue in the transaction of its business in this State, nor authorize the

foreign bank to transact business in this State under any name other than the name set forth in its license, nor extend the duration of its corporate existence. If the amendment is in a foreign language, an English translation of the amendment under the oath of the translator shall accompany the amendment.

**§412: -210 Separate assets.** (a) Each foreign bank that is licensed to establish and maintain a Hawaii state branch or Hawaii state agency in this State shall keep the assets of its business in this State separate and apart from the assets of its business outside this State.

(b) The creditors of a foreign bank arising out of transactions with, and recorded on the books of, its Hawaii state branch or Hawaii state agency shall be entitled to absolute preference and priority over the creditors of the foreign bank's offices located outside this State with respect to the assets of the foreign bank in this State.

**§412: -211 Disclosure of lack of deposit insurance.** Each foreign bank that is licensed to establish and maintain a Hawaii state branch or Hawaii state agency, in a manner established by the commissioner by rule or order, shall give notice that deposits and credit balances in the branch or agency office are not insured by the Federal Deposit Insurance Corporation. The foregoing notice requirement shall not apply to an insured Hawaii state branch of a bank organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

**§412: -212 Limitations on payment of interest on deposits.** A foreign bank that is licensed to establish and maintain a Hawaii state branch or Hawaii state agency shall be subject to the same limitations with respect to the payment of interest on deposits as a state bank that is a member of the Federal Reserve System.

**§412: -213 Pledge of assets.** (a) Each foreign bank that is licensed to establish and maintain a Hawaii state branch or Hawaii state agency shall keep on deposit \$500,000 or any greater amount as the commissioner may prescribe by rule in unaffiliated Hawaii banks as have been selected by the foreign bank and approved in writing by the commissioner.

(b) The only assets that may be deposited in order to comply with this section are:

- (1) Cash;
- (2) Any negotiable certificate of deposit which:
  - (A) Has a maturity of not more than one year;
  - (B) Is payable in the United States; and
  - (C) Is issued by a bank organized under the laws of a state of the United States, by a national bank, or by a branch office of a foreign bank which is located in the United States;
- (3) Securities and obligations of the United States government and any agency of the United States government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States;
- (4) Securities and obligations of United States government-sponsored agencies which are originally established or chartered by the United States government to serve public purposes specified by the Congress but whose debt obligations are not explicitly guaranteed by the full faith and credit of the United States;

- (5) Obligations of the International Bank for Reconstruction and Development, the InterAmerican Development Bank, the Asian Development Bank, or the African Development Bank;
- (6) Securities and obligations issued by this State or any county of this State, through an appropriate agency or instrumentality; and
- (7) Any other assets as the commissioner shall permit by rule or order.

Any assets deposited shall be valued at the lower of principal amount or market value. The commissioner may limit the amount of each type of asset that may be deposited. An asset will not satisfy the requirements of this section if it is an instrument that is issued by the foreign bank itself, or by a person who controls, is controlled by, or is in common control with the foreign bank.

(c) The commissioner, from time to time, may require that the assets deposited pursuant to this section may be maintained by the foreign bank in an amount, in a form, and subject to any conditions, the commissioner deems necessary or desirable for the maintenance of a sound financial condition, the protection of depositors and the public interest, and to maintain public confidence in the business of the Hawaii state branch or Hawaii state agency. The commissioner may give credit to reserves required to be maintained with a Federal Reserve Bank in or outside this State pursuant to federal law, in accordance with rules or procedures as the commissioner may adopt.

(d) So long as it shall continue business in the ordinary course, the foreign bank shall be permitted to collect interest on the securities deposited under this section and from time to time exchange, examine and compare the securities.

**§412: -214 Asset maintenance.** (a) Each foreign bank that is licensed to establish and maintain a Hawaii state branch or Hawaii state agency shall hold in this State currency, bonds, notes, debentures, drafts, bills of exchange, or other evidences of indebtedness, including loan participation agreements or certificates, or other obligations payable in the United States or in United States funds or, with the prior approval of the commissioner, in funds freely convertible into United States funds, or any other assets as the commissioner shall by rule or order permit, in an amount which shall bear the relationship as the commissioner prescribes by rule or order to liabilities of the foreign bank appearing in the books, accounts, or records of its Hawaii state branch or Hawaii state agency, including acceptances, but excluding amounts due and other liabilities to other offices, agencies or branches of, and wholly owned (except for a nominal number of directors' shares) subsidiaries of, the foreign bank and any other liabilities as the commissioner shall determine.

(b) In implementing this section, the commissioner may vary the ratio of assets to liabilities for Hawaii state branches or Hawaii state agencies applicable under this section, of certain foreign banks as determined by the commissioner in the commissioner's discretion to be necessary or desirable to reflect differences among these Hawaii state branches or Hawaii state agencies on account of:

- (1) The financial condition of the Hawaii state branch or agency offices of the foreign bank;
- (2) The financial condition of branch or agency offices of the same foreign bank located in other states;
- (3) General economic conditions prevalent in the home country of the parent foreign bank; or
- (4) The financial condition of the parent foreign bank itself, including but not limited to (A) the financial condition of its branches and agencies located in other countries, (B) the financial condition of its affiliated bank and nonbank subsidiaries in the United States, and (C) the financial condition of the foreign bank on a worldwide consolidated basis or in its home country.

(c) For the purposes of this section, the commissioner shall value marketable securities at principal amount or market value, whichever is lower, shall have the right to determine the value of any non-marketable bond, note, debenture, draft, bill of exchange, other evidence of indebtedness, including loan participation agreements or certificates, or of any other asset or obligation held or owed to the foreign bank or its Hawaii state branch or Hawaii state agency in this State, and in determining the amount of assets for the purpose of computing the above ratio of assets to liabilities, by rule or order may exclude in whole or in part any particular asset.

(d) If, by reason of the existence or the potential occurrence of unusual and extraordinary circumstances, the commissioner deems it necessary or desirable for the maintenance of a sound financial condition, the protection of depositors, creditors, and the public interest, and to maintain public confidence in the business of a Hawaii state branch or Hawaii state agency, the commissioner, subject to any terms and conditions as the commissioner may prescribe, may require the foreign bank to deposit the assets required to be held in this State pursuant to this section with any Hawaii bank, as the commissioner may designate.

(e) The assets held to satisfy the assets to liabilities relationship, prescribed by the commissioner pursuant to this section, shall include obligations of any person for money borrowed from a foreign bank holding a license to establish and maintain a Hawaii state branch or Hawaii state agency only to the extent that the total of the obligations of any person are not more than ten per cent of the assets considered for purposes of this section.

**§412: -215 Representative office of foreign banks; necessity of licensure.** (a) No foreign bank shall establish or maintain a Hawaii representative office unless the foreign bank is licensed by the commissioner to maintain a Hawaii representative office.

(b) Nothing in subsection (a) shall be deemed to prohibit a foreign bank which maintains a federal agency or federal branch in this State from establishing or maintaining one or more Hawaii representative offices.

**§412: -216 Representative office; application.** (a) The application for a license to establish and maintain a Hawaii representative office shall be in writing under oath and shall be in a form and contain any information as the commissioner may require by rule or order. The application shall be accompanied by a non-refundable application fee of \$1,500 or a greater amount as the commissioner may establish by rule.

(b) Each application to establish and maintain a Hawaii representative office shall include a statement under oath appointing an agent in this State for receipt of service of process in accordance with section 415-113, if the license is granted.

**§412: -217 Representative office; factors for approval of application.** (a) A foreign bank making an application for a license to establish and maintain a Hawaii representative office shall deliver to the commissioner three duplicate originals, or a greater number as the commissioner may require by rule, of the foreign bank's application.

(b) The commissioner shall issue a license to a foreign bank to establish and maintain a Hawaii representative office if the commissioner finds that:

- (1) The foreign bank is in good standing under the laws of the country in which it is organized and is in sound financial condition;
- (2) The management of the foreign bank and the proposed management of the Hawaii representative office are of good moral character, competent, and sufficiently experienced; and

- (3) The convenience and needs of persons to be served by the proposed Hawaii representative office will be promoted.

(c) In considering whether the management of the foreign bank and the proposed management of the Hawaii representative office is of good moral character for the purposes of subsection (b), the commissioner may presume that in the absence of creditable evidence to the contrary, the management is of good moral character. The presumption may be rebutted by evidence to the contrary, including, but not limited to a finding that a person has:

- (1) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;
- (2) Consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty;
- (3) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;
- (4) Wilfully made or caused to be made in any application or report filed with the commissioner, or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has wilfully omitted to state in any application or report any material fact which was required to be stated therein; or
- (5) Wilfully committed any violation of, or has wilfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this chapter or of any rule or order issued under this chapter.

(d) If the commissioner approves the application of the foreign bank for a license to establish and maintain a Hawaii representative office, the foreign bank shall then provide satisfactory evidence to the commissioner of compliance with the applicable requirements of chapter 415, relating to foreign corporations. The commissioner shall then:

- (1) Endorse on each original of the application the word "Filed", and the date of the filing thereof and return to the foreign bank one original so endorsed;
- (2) File in the commissioner's office one of the originals of the application; and
- (3) Issue a license to establish and maintain a Hawaii representative office to the foreign bank.

(e) Each license issued to a foreign bank to establish and maintain a Hawaii representative office shall state fully the name of the foreign bank to which the license is issued, the address or addresses at which the Hawaii representative office is to be located, and any other information as the commissioner may require.

**§412: -218 Representative office; permissible activities.** (a) A foreign bank which is licensed to establish and maintain a Hawaii representative office, subject to any rules as the commissioner may prescribe, may engage in the following activities:

- (1) Solicitation for loans and in connection therewith the assembly of credit information, making of property inspections and appraisals, securing of title information, preparation of applications for loans including making recommendations with respect to action thereon, solicitation of investors to purchase loans from the foreign bank, and the search for investors to contract with the foreign bank for servicing of the loans;
- (2) The solicitation of new business;



- (3) The conduct of research; and
- (4) Back office administrative functions as may be more specifically defined in rules issued by the commissioner.

Any other activity which the foreign bank seeks to conduct at the office shall be subject to the prior written approval of the commissioner by general rule or upon application in a form as the commissioner shall require.

(b) Notwithstanding subsection (a), a Hawaii representative office that is a regional administrative office of the foreign bank, as may be defined more fully by the commissioner in rules and orders, may engage in credit approval activities provided that (1) the foreign bank give forty-five days prior written notice to the commissioner; and (2) the commissioner does not object within the forty-five day period to the conduct of the activities by the Hawaii representative office. Written notice under this subsection shall be in a form and contain any information as the commissioner shall require.

**§412: -219 Posting of license.** Each foreign bank that is licensed to establish and maintain a Hawaii state branch, Hawaii state agency, or Hawaii representative office shall post its license in a conspicuous place at the office.

**§412: -220 Licenses not transferable.** No license issued by the commissioner in accordance with this article shall be transferable or assignable.

**§412: -221 Change of control of foreign bank.** A foreign bank that is licensed to establish and maintain a Hawaii state branch, Hawaii state agency, or Hawaii representative office shall file with the commissioner a notice, in a form and containing any information as the commissioner may prescribe, no later than fourteen calendar days after the foreign bank becomes aware of any acquisition of control of the foreign bank or merges with another foreign bank.

**§412: -222 Relocation of office; written notice necessary.** (a) No foreign bank that is licensed to establish and maintain a Hawaii state branch, Hawaii state agency, or Hawaii representative office shall relocate any Hawaii office unless the foreign bank provides prior written notice to commissioner and the commissioner has approved the relocation.

(b) Written notice provided by a foreign bank under this section shall be in a form and contain any information as the commissioner shall require and shall be accompanied by a fee, the amount of which shall be established by rule.

**§412: -223 Examination; payment of fees.** (a) A Hawaii state branch, Hawaii state agency, or Hawaii representative office shall be subject to examination by the commissioner at intervals prescribed, and in accordance with, section 412:2-200.

(b) In conducting an examination pursuant to this section, the commissioner shall:

- (1) Have full access to the offices, books, accounts, and records of each office located in this State as well as all of the books, accounts, and records maintained in this State of any office not located in this State of the foreign bank; and
- (2) Have authority to require the attendance of, and to examine under oath, all persons whose testimony may be required relative to the activities of the office.

(c) A foreign bank that is licensed to establish and maintain a Hawaii state branch, Hawaii state agency, or Hawaii representative office shall be subject to examination fees, examination expenses, and all other fees and assessments in

accordance with the laws of this State and the rules of the commissioner, including but not limited to sections 412:2-105, 412:2-109, and 412:2-315.

**§412: -224 Supervision and enforcement.** (a) The commissioner shall have all of the powers granted to the commissioner by the laws of this State to the extent appropriate to enable the commissioner to supervise each Hawaii state branch, Hawaii state agency, or Hawaii representative office.

(b) In order to carry out the purposes under this article, the commissioner may:

- (1) Enter into cooperative, coordinating, or information-sharing agreements with any other bank supervisory agency or any organization affiliated or representing one or more bank supervisory agencies;
- (2) With respect to periodic examination or other supervision of a foreign bank that maintains a Hawaii state branch, Hawaii state agency, or Hawaii representative office, accept reports of examinations performed by, and reports submitted to, other bank supervisory agencies in lieu of conducting examinations, or of receiving reports, as might otherwise be required under this article;
- (3) Enter into joint examinations or joint enforcement actions with any other bank supervisory agency having concurrent jurisdiction over any foreign bank; provided that the commissioner, at any time, may take any action independently if the commissioner determines that the action is necessary or appropriate to carry out the commissioner's responsibilities under this article and to ensure compliance with the laws of this State;
- (4) Enter into contracts, exempt from the requirements of chapter 103D, with any bank supervisory agency having concurrent regulatory or supervisory jurisdiction over a foreign bank maintaining a Hawaii state branch, Hawaii state agency, or Hawaii representative office, to engage the services of the agency's examiners at a reasonable rate of compensation; and
- (5) Assess supervisory, examination, and other fees and charges that shall be payable by foreign banks maintaining a Hawaii state branch, Hawaii state agency, or Hawaii representative office in connection with the commissioner's performance of the commissioner's duties under this article and in accordance with this chapter and rules adopted by the commissioner.

(c) Supervisory, examination, and other fees and charges assessed by the commissioner in accordance with this article may be shared with other bank supervisory agencies or any organizations affiliated with or representing one or more bank supervisory agencies in accordance with agreements between the commissioner and the agencies or organizations.

**§412: -225 Reports.** (a) Each foreign bank that is licensed to establish and maintain a Hawaii state branch, Hawaii state agency, or Hawaii representative office shall file with the commissioner any reports the commissioner may require.

(b) Each report filed with the commissioner under this article, or under any rule or order issued under this article, shall be in a form and contain any information, shall be signed in a manner, and shall be verified in a manner, as the commissioner may require.

**§412: -226 Books, accounts, and records.** Each foreign bank that is licensed to establish and maintain a Hawaii state branch, Hawaii state agency, or

Hawaii representative office shall maintain or make available at any office appropriate books, accounts, and records reflecting:

- (1) All transactions effected by or on behalf of the office; and
- (2) All actions taken in this State by employees of the foreign banking corporation located in this State to effect transactions on behalf of any office of the foreign bank located outside this State.

**§412: -227 Voluntary closure of branch, agency, or representative office; application.** (a) No foreign bank that is licensed to establish and maintain a Hawaii state branch, Hawaii state agency, or Hawaii representative office shall close the office without filing an application with, and obtaining the prior approval of, the commissioner. The application filed by a foreign bank under this section shall include the following information:

- (1) The reasons for the closure of the office;
- (2) The current financial condition of the bank in a form prescribed by the commissioner;
- (3) The current business being conducted in the State, and an indication of the assets and liabilities attributable to business conducted in this State;
- (4) A list of all creditors of the bank's business in this State, and their outstanding balances; and
- (5) Any other information as the commissioner may require.

(b) If the commissioner finds, with respect to an application by a foreign bank under this section, that the closing of the office will not be substantially detrimental to the public convenience and advantage, the commissioner shall approve the application. If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign bank under this section has been approved and all conditions precedent to the closing have been fulfilled, the foreign bank may close the office and shall promptly thereafter surrender to the commissioner the license which authorized the foreign bank to maintain the office.

**§412: -228 Suspension or revocation of license; grounds; procedures.**

(a) The commissioner may issue an order revoking a license of a foreign bank to establish and maintain a Hawaii representative office if the commissioner finds that:

- (1) The foreign bank has violated any provision of this article or any other law or rule of this State; or
- (2) Any fact or condition exists which, if it had existed at the time of the foreign bank's original application for the license, would have resulted in the commissioner's refusing to issue the license to the foreign bank.

(b) The commissioner may issue an order suspending or revoking a license of a foreign bank to establish and maintain a Hawaii state branch or Hawaii state agency if the commissioner finds that:

- (1) The foreign bank has violated any provision of this article, or any rule or order issued under this article, or any provision of any other applicable law, rule, or order;
- (2) The foreign bank is transacting activities in this State in an unsafe or unsound manner or, in any case, is transacting activities elsewhere in an unsafe or unsound manner;
- (3) The foreign bank, or any one or more of its Hawaii state branches or Hawaii state agencies, is in an unsafe or unsound condition;
- (4) The foreign bank has ceased to operate any of its offices in this State without the prior approval of the commissioner in accordance with this article;

- (5) The foreign bank is insolvent in that it has ceased to pay its debts in the ordinary course of business, it cannot pay its debts as they become due, or its liabilities exceed its assets;
- (6) The foreign bank has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;
- (7) The foreign bank has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any foreign or domestic bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any relief under law against the foreign bank and the foreign bank has by any affirmative act, approved of or consented to an action or relief has been granted;
- (8) A receiver, liquidator, or conservator has been appointed for the foreign bank or that any proceeding for an appointment of a receiver, liquidator, or conservator, or any similar proceeding has been initiated in the country of the foreign bank's organization;
- (9) The existence of the foreign bank or the authority of the foreign bank to transact banking business under the laws of the country of the foreign bank's organization has been suspended or terminated; and
- (10) Any fact or condition exists which, if it had existed at the time when the foreign bank applied for its license to transact business in this State, would have been grounds for denying its application.

(c) In issuing a revocation order under subsection (a) or a suspension or revocation order under subsection (b), the commissioner may revoke or suspend a license, and shall follow the procedures regarding notice, hearing, appeal, and enforcement of the order as provided in sections 412:2-311 and 412:2-312.

(d) A foreign bank may waive its right to a hearing on any notice of charges by stipulating and consenting to the issuance of an order suspending or revoking a license. Any final suspension or revocation order issued by consent shall be effective as of the date specified therein and shall remain effective until modified or terminated by the commissioner.

**§412: -229 Immediate suspension or revocation.** (a) If the commissioner finds that any of the factors set forth in section 412: -228(b) are true with respect to any foreign bank that is licensed to maintain a Hawaii state branch or Hawaii state agency, and that it is necessary for the protection of the interests of creditors of the foreign bank's business in this State or, in any case, for the protection of the public interest that the commissioner immediately suspend or revoke the license of the foreign bank, the commissioner may issue, without notice and hearing, an order immediately suspending or revoking the license of the foreign bank for a period of up to twenty days, pending investigation or hearing.

(b) The order immediately suspending or revoking the license shall be accompanied by a notice of charges which states the alleged grounds for the order. The notice of charges shall set forth a time and place for a hearing to determine whether the immediate order of suspension or revocation shall be made final.

(c) The order shall be effective upon service on the Hawaii state branch or Hawaii state agency and shall remain in effect until a final order is issued after a hearing, a final order is consented to, or the charges are dismissed upon completion of a hearing. The foreign bank may contest the issuance of the immediate suspension or revocation order by applying to the circuit court for an injunction.

(d) Within twenty days after the service of a notice of charges, unless an earlier date or later date is set by the commissioner upon request of the foreign bank, the commissioner shall hold a hearing in accordance with chapter 91. If no appearance is made at the scheduled hearing by the foreign bank or the foreign

bank's authorized representative, the foreign bank shall be deemed to have consented to the issuance of the final suspension or revocation order. Any appeal of a final order of suspension or revocation shall be made to the circuit court in accordance with chapter 91.

(e) Any order of immediate suspension or revocation may be enforced in the circuit court upon application by the commissioner. Any final order of suspension or revocation issued in accordance with this section may be enforced as provided for in section 412: -228(c).

**§412: -230 Seizure of foreign bank's property and business; liquidation.** (a) If the commissioner finds that any of the factors set forth in section 412: -228 are true with respect to any foreign bank that is licensed to establish and maintain a Hawaii state branch or Hawaii state agency and that it is necessary for the protection of the interests of the creditors of the foreign bank's business in this State, or for the protection of the public interest that a conservator or receiver take immediate possession of the property and business of the foreign bank, the commissioner, by order, may appoint a conservator or receiver forthwith to take possession of the property and business of the foreign bank in this State and retain possession until the foreign bank resumes business in this State or is finally liquidated. The provisions of part IV of article 2 of this chapter, to the extent applicable, shall govern the procedures for appointment of the conservator or receiver, any judicial proceedings arising from the appointment, and the duties and powers of the conservator or receiver. The foreign bank, with the consent of the commissioner, may resume business in this State upon any conditions as the commissioner may prescribe by rule or order.

(b) Whenever a conservator or receiver takes possession of the property and business of a foreign bank pursuant to subsection (a), the conservator or receiver shall conserve or liquidate the property and business of the foreign bank pursuant to the laws of this State as if the foreign bank were a Hawaii state bank, with absolute preference and priority given to the creditors of the foreign bank arising out of transactions with, and recorded on the books of, its Hawaii state branch or Hawaii state agency over the creditors of the foreign bank's offices located outside this State.

(c) Whenever a receiver has completed the liquidation of the property and business of a foreign bank, the receiver shall transfer any remaining assets to the foreign bank in accordance with the orders as the court may issue. However, in case the foreign bank has an office in another state of the United States that is in liquidation and the assets of that office appear to be insufficient to pay in full the creditors of that office, the court shall order the receiver to transfer to the liquidator of that office the amount of any remaining assets as appears to be necessary to cover the insufficiency; if there are two or more offices and the amount of remaining assets is less than the aggregate amount of insufficiencies with respect to the offices, the court shall order the receiver to distribute the remaining assets among the liquidators of the offices in a manner as the court finds equitable.

### **PART III. HAWAII BRANCHES OF OUT-OF-STATE FOREIGN BANKS**

**§412: -300 Purposes.** This part is generally intended to ensure that interstate state branches of out-of-state foreign banks may be established and operated in this State:

- (1) To the extent consistent with the provisions of section 5 of the federal International Banking Act; and

- (2) Under terms and conditions that are generally comparable to and no less favorable than those applicable to, the establishment of interstate federal branches in this State by out-of-state foreign banks.

**§412: -301 Establishment of interstate branches in this State by out-of-state foreign banks.** (a) Except as provided in subsection (b), an out-of-state foreign bank may establish an interstate Hawaii state branch in the same manner (including by merger or other transactions under section 44 of the Federal Deposit Insurance Act, and comparable provisions of the laws of this State, with Hawaii banks or other institutions) as, and generally subject to the same criteria, standards, conditions, requirements, and procedures applicable to the establishment of interstate branches in this State by, an out-of-state bank having the same home state in the United States, notwithstanding any provision of the laws or rules of this State to the contrary.

(b) Notwithstanding subsection (a), the commissioner:

- (1) Shall apply to the establishment of an initial interstate Hawaii state branch, and subsequent intrastate Hawaii state branches, of any out-of-state foreign bank the same criteria, standards, conditions, requirements, and procedures applicable under part II of this article, or rules thereunder to the establishment of an initial Hawaii state branch, and of subsequent intrastate Hawaii state branches, respectively;
- (2) May apply any other criteria, standards, conditions, requirements, or provisions of the laws or rules of this State that are determined by the commissioner to be substantially equivalent to or consistent with criteria, standards, conditions, requirements, or provisions of federal law or regulation generally applicable to the establishment of branches in the United States by foreign banks or specifically applicable to the establishment of a branch in the United States by the applicant foreign bank;
- (3) May by rule or order allow an out-of-state foreign bank:
  - (A) To acquire an individual branch of any "insured bank" within the meaning of section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)), or of any other depository institution, including another foreign bank, without acquiring the entire bank or other institution; or
  - (B) To acquire or merge with another foreign bank maintaining a Hawaii state branch or agency and thereafter continue operations as its own; and
  - (C) To acquire or establish an interstate Hawaii state branch through any other means not inconsistent with section 5 of the federal International Banking Act (12 U.S.C. 3103)."

SECTION 3. Article 5A of chapter 412, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“ARTICLE 5A. INTERNATIONAL [AND FOREIGN] BANKING  
CORPORATIONS”**

SECTION 4. Part II of article 5A of chapter 412, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“PART II. [INTERNATIONAL BANKING CORPORATIONS]  
APPLICATION PROCEDURES AND POWERS”**

SECTION 5. Section 412:3-609, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any one or more financial institutions may merge into another financial institution and any two or more financial institutions other than credit unions may consolidate into a new financial institution if the institutions shall have complied with all requirements, conditions, and limitations imposed by this chapter and by federal law, if applicable. A merger or consolidation in which one or more of the participating financial institutions is a financial institution chartered or licensed under the laws of or whose operations are conducted principally in any state other than Hawaii, in any possession or territory of the United States or in any foreign country shall be authorized only in accordance with subsection (d), [or] in accordance with part IV [of], article 5[.], of this chapter or in accordance with article .”

SECTION 6. Part III of article 5A, chapter 412, Hawaii Revised Statutes, is repealed.

SECTION 7. The commissioner of financial institutions shall review the interstate branching laws adopted by other jurisdictions to determine whether the following restrictions contained in this Act should be continued, modified, sunsetted, or repealed. The commissioner of financial institutions shall submit a report, along with findings and recommendations to the legislature not less than twenty days prior to the convening of the regular session of 1997. The following restrictions are to be reviewed:

- (1) The prohibition of de novo branching (opening a new branch) by out-of-state banks (section 412: -105(a), Hawaii Revised Statutes);
- (2) The prohibition of partial acquisition of branches (purchasing single branches) by out-of-state banks (section 412: -105(b), Hawaii Revised Statutes); and
- (3) The requirement that only banks that have been in operation for at least five years (five-year age requirement) may be acquired in a whole bank acquisition (section 412: -104(b)(1), Hawaii Revised Statutes).

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect on June 1, 1997; provided that section 7 shall take effect upon approval.

(Approved June 12, 1996.)

**ACT 156**

S.B. NO. 2848

A Bill for an Act Relating to Occupational Safety and Health Fees.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 396, Hawaii Revised Statutes, is amended by adding a new section to be designated and to read as follows:

**“§396-5.1 Fees.** (a) The director may establish fees pursuant to chapter 91 to be charged for the following:

- (1) Any aspect relating to the issuance of permits, certificates, or licenses required by this chapter or rule adopted by the director;
- (2) Searching, reviewing, segregating, and providing records pursuant to chapter 92F requests where such fees are not provided for under rules adopted by the office of information practices;
- (3) The costs of training materials used in department sponsored workshops; and
- (4) The costs of public notices required for variances, and public requests for adoption, amendment, or repeal of rules.

(b) Fees received pursuant to subsection (a) shall be deposited into the general fund.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 157**

S.B. NO. 2850

A Bill for an Act Relating to Voluntary Withholding of Federal and State Income Taxes from Unemployment Compensation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§235- Voluntary deduction and withholding of state income tax from unemployment compensation.** An individual receiving unemployment compensation benefits under chapter 383 may elect to have state income tax deducted and withheld from the individual’s payment of unemployment compensation at the rate of five per cent in accordance with section 383- .”

SECTION 2. Chapter 383, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§383- Voluntary deduction and withholding of federal and state income taxes.** (a) An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, be advised that:

- (1) Unemployment compensation is subject to federal and state income tax;
- (2) Requirements exist pertaining to estimated tax payments;
- (3) The individual may elect to have federal income tax deducted and withheld from the individual’s payment of unemployment compensation at the amount specified in the federal Internal Revenue Code;
- (4) The individual may elect to have state income tax deducted and withheld from the individual’s payment of unemployment compensation at the amount specified in section 235- ;



(5) The individual may elect to have state and local income taxes deducted and withheld from the individual's payment of unemployment compensation for other states and localities outside this State at the percentage established by the state or locality, if the department by agreement with the other state or locality is authorized to deduct and withhold income tax; and

(6) The individual shall be permitted to change a previously elected withholding status no more than once during a benefit year.

(b) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment compensation fund until transferred to the federal, state, or local taxing authority as a payment of income tax.

(c) The director shall follow all procedures specified by the United States Department of Labor, the federal Internal Revenue Service, and the state department of taxation, pertaining to the deducting and withholding of income tax.

(d) Amounts shall be deducted and withheld under this section only after any other amounts allowed under chapter 383 are deducted and withheld."

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect on January 1, 1997.

(Approved June 12, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 158**

S.B. NO. 2887

A Bill for an Act Relating to Correctional Industries Advisory Committee.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 354D-5, Hawaii Revised Statutes, is amended to read as follows:

**"§354D-5 Advisory committee.** (a) There is established within the department a committee to be known as the correctional industries advisory committee. This advisory committee shall advise the department of the feasibility of establishing venture agreements with private sector businesses to utilize the services of qualified, able-bodied inmates pursuant to section 354D-13.

(b) The advisory committee shall consist of nine members who shall be appointed by the governor [for staggered terms of two years] in accordance with section 26-34. [Each term shall commence on July 1 of the year of appointment and expire on the second June 30 following that date.] The governor shall designate a member to be chairperson of the advisory committee. The director or a designee shall serve as an ex officio nonvoting member of the advisory committee. In establishing the advisory committee, the governor shall appoint at least two members representing private sector businesses and two members representing labor unions. The members shall serve without compensation but shall be reimbursed for expenses, including travel expenses, that are necessary for the performance of their duties."

SECTION 2. Of the nine appointed membership positions of the correctional industries advisory committee, three positions have two-year terms expiring on June

## ACT 159

30, 1996, and six positions have two-year terms expiring on June 30, 1997. All members of the advisory committee serving on the effective date of this Act may continue to serve until the expiration of their current terms of appointment. Pursuant to section 26-34(a), Hawaii Revised Statutes, the governor may reduce the terms of those initially appointed so as to provide, as nearly as can be, for the expiration of an equal number of terms at intervals of one year. Of the three positions with terms commencing on July 1, 1996, the governor shall appoint two members for initial terms of two years ending on June 30, 1998, and one member for a term of four years ending on June 30, 2000. Senate confirmation during the regular session of 1996 of a two-year appointment to the advisory committee shall be deemed to be applicable to the four-year appointment for that same appointee. Of the six positions with terms commencing on July 1, 1997, the governor shall appoint two members for initial terms of two years ending on June 30, 1999, two members for initial terms of three years ending on June 30, 2000, and two members for terms of four years ending on June 30, 2001. Upon the expiration of those terms of appointments, four-year terms shall be maintained for each membership position.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

## ACT 159

S.B. NO. 2992

A Bill for an Act Relating to Stadiums.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 109-7, Hawaii Revised Statutes, is amended to read as follows:

**“[[§109-7]] Enforcement; penalty.** (a) Any law enforcement officer who has police powers to arrest offenders and issue citations, including any police officer of the counties, shall have the authority to enforce any rule promulgated pursuant to section 109-2(4).

(b) Any person<sup>1</sup> violating any rule of the stadium authority regulating conduct[, parking, or traffic] on the stadium premises shall be guilty of a petty misdemeanor punishable by a fine not exceeding [\$500,] \$1,000, or imprisonment not exceeding [30] thirty days, or both.

(c) Any person violating any rule of the stadium authority regulating parking or traffic on the stadium premises shall have committed a traffic infraction as set forth in chapter 291D, the adjudication of which shall be subject to the provisions contained therein.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 1996.

(Approved June 12, 1996.)

Note

1. Prior to amendment “convicted of” appeared here.

ACT 160

S.B. NO. 3021

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 296-7, Hawaii Revised Statutes, is repealed.

SECTION 2. Section 296-8, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 296-9, Hawaii Revised Statutes, is repealed.

SECTION 4. If S.B. No. 2446<sup>1</sup> is passed by the legislature in any form during this regular session of 1996, whether before or after the effective date of this Act, then sections -1207, -1208, -1209, Hawaii Revised Statutes, as contained in Section 2 of S.B. No. 2446<sup>1</sup> shall reflect the repeal of sections 296-7, 296-8, 296-9, Hawaii Revised Statutes, in this Act.

SECTION 5. Statutory material to be repealed is bracketed.<sup>2</sup>

SECTION 6. This Act, upon its approval, shall take effect on June 30, 1997.

(Approved June 12, 1996.)

Notes

1. Act 89.
2. Edited pursuant to HRS §23G-16.5.

ACT 161

S.B. NO. 3266

A Bill for an Act Relating to Real Property.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 508D-1, Hawaii Revised Statutes, is amended to read as follows:

“**[§508D-1] Definitions.** As used in this chapter, unless the context requires otherwise:

“Disclosure [of real property condition] statement” [or “statement”] means a written statement prepared by the seller or at the seller’s direction, that purports to fully and accurately [discloses] disclose all material facts relating to the residential real property being offered for sale that:

- (1) Are within the knowledge or control of the seller;
- (2) Are disclosed by documents recorded in the bureau of conveyances; or
- (3) Can be observed from visible, accessible areas.

“Material fact” means any [material] fact, defect, or condition, past or present, [relating to] which materially affects the value of the residential real property being offered for sale [that may influence the decision of the buyer, based on the seller’s or the seller’s agent’s observation of:

- (1) Visible, accessible areas;
- (2) Related recorded and unrecorded documents;
- (3) Information available from governmental agencies; and
- (4) Information within the knowledge and control of the seller].

The disclosure statement shall not be construed as [a warranty of any kind, or] a substitute for any expert inspection, professional advice, or warranty that the buyer may wish to obtain.

["Material change" means any change which affects the information contained in a disclosure of real property condition statement in any one of the following ways:

- (1) Renders it misleading;
- (2) Substantially affects the rights or obligations of a buyer; or
- (3) May reasonably affect a buyer's decision to buy, including changes in the use, size, value, restrictive covenants, and encumbrances.]

"Real estate purchase contract" means a contract, [including] as it may be amended, by which a seller agrees to sell and a buyer agrees to buy residential real property which shall include a deposit, receipt, offer, acceptance, or other similar agreement for the sale[, exchange, long-term lease without option to buy,] or lease with option to buy [of real property, and any amendments to the contract].

"Residential real property" means fee simple or leasehold real property on which currently is situated:

- (1) From one to four dwelling units; or
- (2) A residential condominium or cooperative apartment, the primary use of which is occupancy as a residence.

["Transfer or disposition] "Sale of residential real property" [includes a sale, exchange,] means the transfer or disposition of residential real property for consideration including, without limitation, a sale by exchange (provided that the transferor to an exchange accommodator but not the exchange accommodator who has acquired the residential real property for tax purposes prior to transfer to the buyer is deemed to be the seller for purposes of this chapter), auction, [long-term lease without option to buy,] or lease with option to buy."

SECTION 2. Section 508D-2, Hawaii Revised Statutes, is amended to read as follows:

**"[§508D-2] Applicability.** Except as otherwise provided for in this chapter, this chapter applies to any [transfer or disposition] sale of [an improved or unimproved residential lot or] residential real property [consisting of one to four dwelling units, including:

- (1) A condominium apartment; and
- (2) A cooperative apartment]. The failure of the seller or the seller's agent to comply with this chapter shall not affect the validity of title to any residential real property sold."

SECTION 3. Section 508D-3, Hawaii Revised Statutes, is amended to read as follows:

**"§508D-3 Exemptions.** [The provisions of this] This chapter shall not apply to the [transfer or disposition] following sales of residential real property:

- (1) [To] Sale to a co-owner;
- (2) [To] Sale to a spouse, parent, or child of the seller;
- (3) [To any transfer by] Sale by devise, descent, or court order;
- (4) [By] Sale by operation of law, including, but not limited, to<sup>1</sup> any transfer by foreclosure, bankruptcy, or partition [sales;], or any transfer

- to a seller's creditor incident to a deed (or assignment) in lieu of foreclosure, workout, or the settlement or partial settlement of any preexisting obligation of a seller owed a creditor and any later sale of residential real property by such creditor;
- (5) [Resulting] Sale by a lessor to a lessee resulting from conversion of [lease] leased land to fee simple;
  - (6) [To initial sales of new single family dwelling units under a current public offering statement;] Initial sale of new residential real property pursuant to chapter 484 under a current public offering statement or chapter 484 exemption;
  - (7) Sale where the seller is an absentee owner who has complied with the requirements of section 508D-10;
  - [(7) Made pursuant to chapter 521;
  - (8) When the seller and buyer agree in writing that the transfer will not be covered under this chapter as outlined in section 508D-10;
  - (9) Regarding the initial sales] (8) Sales of condominium apartments [under] accompanied by delivery of an unexpired public report; or
  - [(10) Regarding the sale] (9) Sale of time share interests [duly registered under a current effective disclosure statement pursuant to] as defined under chapter 514E.”

SECTION 4. Section 508D-4, Hawaii Revised Statutes, is amended to read as follows:

**“[[§508D-4]] Prohibitions on [transfers or disposition] sales of residential real property.** Except as provided in section 508D-3, no seller may [transfer or dispose of any interest in] sell residential real property [subject to the disclosure requirements of this chapter] unless:

- (1) Prior to the [transfer or disposition] sale of such residential real property, a disclosure [of real property condition] statement is:
  - (A) Signed and dated by the seller [and dated] within six months [of] before or ten calendar days after the acceptance of [an offer to purchase;] a real estate purchase contract by the buyer; and
  - (B) Delivered to the buyer as provided in section 508D-5;
- [(2) The buyer is afforded a reasonable opportunity to examine the statement as provided in section 508D-5; and
- (3) (2) The buyer acknowledges receipt of the disclosure statement on the real estate purchase contract or in any addendum attached to the contract, or in a separate document[, and indicates in writing any rescission of the offer.]; and
- (3) The buyer is afforded the opportunity to examine the disclosure statement as provided in section 508D-5.”

SECTION 5. Section 508D-5, Hawaii Revised Statutes, is amended to read as follows:

**“[[§508D-5]] Delivery of disclosure [of real property condition] statement to buyer; procedures.** (a) No later than ten calendar days from acceptance of [an offer to purchase real property subject to this chapter,] a real estate purchase contract, the seller, either directly or through the seller's agent, shall provide the disclosure statement to the buyer.

(b) Upon receipt of the disclosure statement, the buyer shall have fifteen calendar days to:

- (1) Examine the disclosure statement; [or] and

- (2) [Rescind] Decide whether to rescind the [offer to purchase real property;] real estate purchase contract.

[subject to this chapter. The] If the buyer decides to rescind the real estate purchase contract, the buyer shall [indicate in writing] deliver to the seller directly or through the seller's agent [any rescission of the offer.] within the fifteen-day period written notification of the buyer's decision to rescind the real estate purchase contract. Failure to deliver the written notification to the seller within the fifteen-day period shall be deemed an acceptance of the disclosure statement. Any rescission [of the offer] made pursuant to this subsection shall be without loss of deposits to the buyer[. Furthermore, all] which deposits shall be immediately returned to the buyer.

(c) The seller and buyer[, in writing,] may agree in writing to reduce or extend the time period provided for the delivery or examination and rescission period. The [language in this subsection shall be included in the] form of the receipt for the disclosure statement[.] required by section 508D-4(2) shall provide that the buyer shall have the right to examine the disclosure statement and to rescind the real estate purchase contract in accordance with this section."

SECTION 6. Section 508D-6, Hawaii Revised Statutes, is amended to read as follows:

**"[§508D-6] Later discovered inaccurate information.** [Within the time period as provided in section 508D-17,] Prior to closing the real estate purchase contract, a buyer who receives a disclosure statement that fails to disclose a material [facts] fact or [defects, or] contains an inaccurate assertion [that an item is not applicable,] which materially affects the value of the residential real property, and who was not aware of the foregoing [failures] failure or [inaccuracies, shall indicate] inaccuracy, may elect in writing [an election] to rescind the real estate purchase contract within fifteen calendar days of the earlier to occur of (1) the discovery thereof, or (2) the receipt of an amended [corrected] disclosure statement[, correcting the foregoing failure or inaccuracy, in the manner provided by [subsections] section 508D-5(b) or (c). The buyer's right to rescind the real estate purchase contract under this section shall not apply if the sale of the residential real property has been recorded; provided that the buyer may pursue all additional remedies provided by law."

SECTION 7. Section 508D-7, Hawaii Revised Statutes, is amended to read as follows:

**"[§508D-7] Seller's agent's duties and responsibilities for disclosure.** (a) Any person or entity[, other than a real estate licensee,] acting in the capacity of an escrow agent for the [transfer or disposition] sale of residential real property subject to this chapter, shall not be deemed the agent of the seller or buyer for purposes of the disclosure requirements of this chapter unless the seller or buyer and the escrow agent agree in writing to the establishment of the agency[.] for such purpose.

(b) When a seller's agent cannot obtain the disclosure statement and does not have written assurances from the buyer that the disclosure statement was received, the seller's agent shall [provide a written notice to the buyer of the] notify the buyer in writing of the buyer's rights to the disclosure statement and rights of rescission provided by this chapter. However, the seller's agent shall not be required to prepare the disclosure statement. The seller's agent responsible for delivering the disclosure statement, or the aforesaid written notification of the buyer's rights if applicable, shall maintain a record of the action taken by that agent to effect compliance.

(c) If the seller's [agent's inspection of the residential real property reveals] agent is or becomes aware of any facts inconsistent with or contradictory to the disclosure [of the real property condition] statement or the inspection report of a third party, the seller's agent shall disclose these facts to the seller, the buyer, and their agents. Nothing in this chapter precludes all other obligations of the seller's or the buyer's agent under Hawaii law.'

SECTION 8. Section 508D-8, Hawaii Revised Statutes, is amended to read as follows:

**“[[§508D-8]] Excluded facts from the disclosure [of real property condition] statement.** Except as otherwise provided by law, the [following material facts may be excluded from the statement:

(1) An] fact that:

- (1) An occupant of the [subject] residential real property was afflicted with acquired immune deficiency syndrome (AIDS) or AIDS related complex [(ARC)], or had been tested for human immunodeficiency virus [(HIV)]; or
- (2) The residential real property was the site of an act or occurrence that had no effect on the physical structure or the physical environment of the residential real property, or the improvements located on the residential real property; [or
- (3) A homicide, felony, or suicide occurred on the real property more than three years before the date the seller signed the statement.]

may be excluded from the disclosure statement. This information shall not be deemed a material fact for purposes of the disclosure statement.”

SECTION 9. Section 508D-9, Hawaii Revised Statutes, is amended to read as follows:

**“[[§508D-9]] Good faith and due care in preparing the disclosure [of real property condition] statement.** (a) A seller or the seller's agent shall prepare the disclosure [of real property condition] statement in good faith[.] and with due care. A buyer shall have no cause of action against a seller or seller's agent for, arising out of, or relating to the providing of a disclosure statement when the disclosure statement is prepared in good faith and with due care [and in good faith]. For purposes of this section, [“good faith”] “in good faith and with due care” includes honesty in fact in the investigation, research, and preparation of the disclosure statement and [includes] may include information on the following:

- (1) Facts based on only the seller's personal knowledge;
- (2) Facts provided to the seller by governmental agencies and departments;
- (3) [Reports] Existing reports prepared for the seller by [a:] third-party consultants, including without limitation a:
  - (A) Licensed engineer;
  - (B) Land surveyor;
  - (C) Geologist;
  - (D) Wood-destroying insect control expert; or
  - (E) Contractor, or other home inspection expert;dealing with matters within the scope of the professional's license or expertise for the purpose of the disclosure [of real property condition] statement; [and]
- (4) An approximation of the information, when [material] sufficient information [required to be disclosed] regarding material facts is [unknown or] not available to the seller, and the seller or seller's agent [make]

makes reasonable efforts to ascertain the information; provided the approximation is:

- (A) Clearly identified as an approximation;
  - (B) Reasonable;
  - (C) Based on the best information available to the seller or seller's agent; [and]
  - (D) Not used for the purpose of circumventing or evading the requirements of this chapter[.]; and
- (5) Facts provided to the seller by a managing agent of a homeowner's association, including without limitation, a condominium, cooperative, or community association.

Notwithstanding this subsection, a seller or seller's agent shall be under no obligation to engage the services of any person in the investigation, research, or preparation of the disclosure statement. The failure to engage the services of any such person for this purpose shall not be deemed an absence of good faith or due care by the seller or the seller's agent in the investigation, research, or preparation of the disclosure statement.

(b) The representations contained in the disclosure [of a real property condition] statement shall be construed to be made only to, [and to be used only by, a] and for the benefit of, the buyer [whose identity has been made known to the seller, a lending institution, or an escrow company involved in processing a real estate purchase contract.] and shall be deemed accurate only as to the time when made, except as otherwise provided in section 508D-13."

SECTION 10. Section 508D-10, Hawaii Revised Statutes, is amended to read as follows:

**"[[§508D-10]] Absentee owners and disclosure.** A seller who has not lived in the residential real property for at least one\_ hundred\_ eighty days prior to the date of receiving [an offer] a real estate purchase contract may [issue a disclaimer] notify the buyer in writing that the seller does not have the requisite personal knowledge to make accurate disclosures about the residential real property, or provide a statement subject to section 508D-9(a)(4). [The seller and] Thereafter the buyer may [agree] elect to:

- (1) Substitute an inspection report by a home inspector, licensed contractor, or licensed appraiser covering the same matters as would have been included in a disclosure statement[:] at the buyer's expense; or
- (2) [Waive] Provide the seller written notification that the buyer waives the applicability of [section 508D-4 in writing.] this chapter."

SECTION 11. Section 508D-11, Hawaii Revised Statutes, is amended to read as follows:

**"[[§508D-11]] Disclosure [forms.] form.** [The] In addition to the other information required by this chapter, the form for the disclosure statement shall include [at least] the following:

- (1) A notice to the buyer [and seller] that the [parties] buyer may wish to obtain professional advice and inspections of the residential real property;
- (2) A notice to the buyer that the information contained in the disclosure statement is the representation of the seller and not the representation of the seller's agent[:] (except as to those representations, if any, being made by the seller's agent); and
- (3) A notice of the buyer's rescission rights pursuant to this chapter."



SECTION 12. Section 508D-12, Hawaii Revised Statutes, is amended to read as follows:

**“[[§508D-12[]] Indication of receipt of [condition] disclosure statement.** (a) The [seller and] buyer shall indicate receipt of the seller’s disclosure [of real property condition] statement on the real estate purchase contract, or in any addendum attached to the contract, or in a separate document.

(b) Receipts taken for the disclosure [of real property condition] statement shall be kept on file in possession of the seller[, or seller’s agent[, or escrow company,] for a period of three years from the date the receipt was taken.”

SECTION 13. Section 508D-13, Hawaii Revised Statutes, is amended to read as follows:

**“§508D-13 [Subsequent] Later material facts.** Information in a disclosure statement that has not been disclosed or becomes inaccurate regarding a material fact as a result of an act [or], agreement, or occurrence (or otherwise becomes known to seller) after the statement is provided to the buyer does not violate this chapter. However, if such information materially affects the value of the residential real property, the seller [is required to] shall provide an amended disclosure statement to the buyer within ten calendar days after the seller’s discovery of [the inaccuracy] such information if the seller discovers [the inaccuracy] such information prior to the recorded sale of the residential real property[.], and in any event, no later than twelve noon of the last business day prior to the recorded sale of the real property. The buyer shall have fifteen calendar days to examine the amended disclosure statement and, if the buyer was not already aware of such information, may rescind real estate purchase contract in accordance with section 508D-5.”

SECTION 14. Section 508D-14, Hawaii Revised Statutes, is amended to read as follows:

**“[[§508D-14[]] Additional disclosure requirements.** The requirements of this chapter are in addition to all other disclosure obligations required by law relating to the [transfer or disposition] sale of residential real property.”

SECTION 15. Section 508D-15, Hawaii Revised Statutes, is amended to read as follows:

**“[[§508D-15[]] Notification required; ambiguity.** (a) When residential real property lies:

- (1) Within the boundaries of a special flood hazard area as officially designated on Flood Insurance Administration maps promulgated by the United States Department of Housing and Urban Development for the purposes of determining eligibility for emergency flood insurance programs;
- (2) Within the boundaries of the noise exposure area shown on maps prepared by the department of transportation in accordance with Federal Aviation Regulation Part 150-Airport Noise Compatibility Planning (14 Code of Federal Regulations Part 150) for any public airport;
- (3) Within the boundaries of the Air Installation Compatibility Use Zone of any Air Force, Army, Navy, or Marine Corps airport as officially designated by military authorities; or
- (4) Within the anticipated inundation areas designated on the department of defense’s civil defense tsunami inundation maps;

subject to the availability of maps that designate the four areas by tax map key (zone, section, parcel), the seller shall include such material fact information in the disclosure statement provided to [buyers] the buyer subject to this chapter. Each county shall provide, where available, maps of its jurisdiction detailing the four designated areas specified in this subsection. The maps shall identify the properties situated within the four designated areas by tax map key number (zone, section, parcel) and shall be of a size sufficient to provide information necessary to serve the purposes of this section. Each county shall provide legible copies of the maps and may charge a reasonable copying fee.

(b) When it is questionable whether residential real property lies within any of the designated areas referred to in subsection (a) due to the inherent ambiguity of boundary lines drawn on maps of large scale, the ambiguity shall be construed in favor of the seller; provided that a good faith effort has been made to determine the applicability of subsection (a) to the subject real property.

[(c) Nothing in this section shall affect the validity of title to real property transferred, based solely on the reason that any seller or seller's agent failed to conform to the provisions of this section.]”

SECTION 16. Section 508D-16, Hawaii Revised Statutes, is amended as follows:

“[[§508D-16]] **Remedies; voidable contracts.** (a) A buyer may elect to complete the purchase of residential real property even if the seller fails to comply with the requirements of this chapter. After recordation of the sale of residential real property, a buyer shall have no right under this chapter to rescind the real estate purchase contract despite the seller's failure to comply with the requirements of this chapter.

(b) When the buyer is provided a [timely good faith] disclosure [of real property condition] statement prepared and delivered in accordance with this chapter and the buyer decides to rescind the real estate purchase contract, the buyer [is limited in] shall not be entitled to any damages but shall be entitled to the immediate return of all deposits.

(c) [When] In addition to the rights of rescission granted to the buyer under this chapter, when the seller negligently fails to provide the [required] disclosure [of real property condition] statement [pursuant to] required by this chapter, the seller shall be liable to the buyer for the amount of the actual damages, if any, suffered as a result of the seller's negligence.

[(d) When the seller wilfully violates this chapter, or fails to perform a duty required by this chapter, the seller is liable to the buyer for up to three times the actual damages suffered by the buyer as a result of the violation or failure.

(e) [(d) In addition to the remedies allowed under [subsections] subsection (b)[,] or (c), [or (d),] a court may also award the [buyer attorney] prevailing party attorney's fees, court costs, and administrative fees.”

SECTION 17. Section 508D-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any action brought under this chapter shall commence within two years from the date the buyer received the disclosure statement; provided that if no disclosure statement was delivered to the buyer, then the action shall commence within two years of the recorded sale [or occupancy; except where the parties have agreed in writing that the disclosures required by this chapter shall be waived.] of the residential real property.”

SECTION 18. Section 508D-18, Hawaii Revised Statutes, is amended to read as follows:

**“[[§508D-18] Arbitration or mediation. Prior] Alternative dispute resolution.** If the real estate purchase contract provides for alternative dispute resolution, then prior to filing an action in [a higher] any court to enforce [the provisions of] this chapter, a seller or buyer shall first submit the claim to [arbitration pursuant to chapter 658 or mediation. However, it is not the intent of this section to limit the buyer’s remedies pursuant to this chapter.] alternative dispute resolution as required in the real estate purchase contract.”

SECTION 19. Section 508D-20, Hawaii Revised Statutes, is repealed.

SECTION 20. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 21. Statutory material to be repealed is bracketed.<sup>2</sup> New statutory material is underscored.

SECTION 22. This Act shall take effect upon its approval.

(Approved June 12, 1996.)

#### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.

## ACT 162

S.B. NO. 2380

A Bill for an Act Relating to Compulsory School Attendance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that:

- (1) Thirty-three states require children to attend school until the age of sixteen years;
- (2) Eight states and the District of Columbia require children to attend school until the age of seventeen years; and
- (3) Nine states, including the State of Hawaii, require children to attend school until the age of eighteen years.

Allowing the principal of a child’s school to excuse the child from school attendance if:

- (1) The child has attained the age of sixteen years;
- (2) The principal has determined that:
  - (A) The child’s continued attendance in class is disruptive to other students or department employees; or
  - (B) The child’s non-attendance is a significant factor that hinders the child’s learning; and
- (3) The school principal and the child’s teacher or counselor, in consultation with the child and the child’s parent develop an alternative educational plan,

will free the department of education and the family courts of the costly and time-consuming task of forcing unwilling children to attend school, while providing some expectation of adult supervision.

SECTION 2. Section 298-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Unless excluded from school or excepted from attendance, all children who will have arrived at the age of at least six years, and who will not have arrived at the age of eighteen years, [on or before December 31] by January 1 of any school year, shall attend either a public or private school for, and during [such], the school year, and any parent, guardian, [and] or other person having the responsibility for, or care of, a child whose attendance at school is obligatory shall send the child to [some such] either a public or private school. [Such attendance] Attendance at a public or private school shall not be compulsory in the following cases:

- (1) Where the child is physically or mentally unable to attend school (deafness and blindness excepted), of which fact the certificate of a duly licensed physician shall be sufficient evidence;
- (2) Where the child, who has reached the fifteenth anniversary of birth, is suitably employed and has been excused from school attendance by the superintendent or the superintendent’s authorized representative, or by a family court judge;
- (3) Where, upon investigation by the family court, it has been shown that for any other reason the child may properly remain away from school;
- (4) Where [a] the child has graduated from high school; [or]
- (5) Where the child is enrolled in an appropriate alternative educational program as approved by the superintendent or the superintendent’s authorized representative in accordance with the plans and policies of the department of education, or notification of intent to home school has been submitted to the principal of the public school [which] that the child would otherwise be required to attend in accordance with department rules adopted to achieve this result[.]; or
- (6) Where:
  - (A) The child has attained the age of sixteen years;
  - (B) The principal has determined that:
    - (i) The child has engaged in behavior which is disruptive to other students, teachers, or staff; or
    - (ii) The child’s non-attendance is chronic and has become a significant factor that hinders the child’s learning;and
  - (C) The principal of the child’s school, and the child’s teacher or counselor, in consultation with the child and the child’s parent, guardian, or other adult having legal responsibility for or care of the child, develops an alternative educational plan for the child. The alternative educational plan shall include a process that shall permit the child to resume school.

The principal of the child’s school shall file the plan made pursuant to subparagraph (C) with the child’s school record. If the adult having legal responsibility for or care of the child disagrees with the plan, then the adult shall be responsible for obtaining appropriate educational services for the child.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. If S.B. No. 2446<sup>1</sup> is passed by the legislature in any form during this regular session of 1996, whether before or after the effective date of this Act, then section -1234, Hawaii Revised Statutes, as contained in Section 2 of S.B. No. 2446<sup>1</sup> shall be amended to reflect amendment of section 298-9, Hawaii Revised Statutes, in this Act.

SECTION 5. This Act shall take effect on July 1, 1996.

(Approved June 14, 1996.)

Note

1. Act 89.

ACT 163

H.B. NO. 50

A Bill for an Act Relating to Persons with Disabilities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 348E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§348E- Rules.** The commission may adopt rules pursuant to chapter 91 including the adoption of rules to implement section 103-50.”

SECTION 2. Section 103-50, Hawaii Revised Statutes, is amended to read as follows:

**“§103-50 Building design to consider needs of persons with disabilities.**

(a) Notwithstanding any other law to the contrary, all plans and specifications for the construction of public buildings and facilities by the State or any county, or on behalf of the State or any county subject to this chapter, shall be prepared so the buildings and facilities are accessible to and usable by persons with disabilities. The buildings and facilities shall conform to the Americans with Disabilities Act Accessibility Guidelines, 36 C.F.R. Pt. 1191[.], as adopted and amended by the architectural access committee.

[(b) The comptroller and the director of finance shall provide the legislature with an annual report of the number and types of buildings or facilities donated or being donated to the State and counties during the year, and the costs, if any, of bringing those buildings or facilities into compliance with the guidelines. The report shall be submitted to each house of the legislature no later than twenty days before the convening of each regular legislative session.

(c)] (b) All agencies subject to this section shall seek advice and recommendations from the commission on persons with disabilities on any construction plans.”

SECTION 3. Section 103-50.5, Hawaii Revised Statutes, is amended to read as follows:

**“§103-50.5 Architectural access committee.** (a) There is established within the department of health for administrative purposes, an architectural access committee to be composed of five members appointed by the governor for staggered terms of four years without the advice and consent of the senate. The members shall

have a special interest or knowledge concerning design standards for persons with disabilities.

(b) The committee shall have the authority to vary specific requirements of section 103-50 when the variance will ensure an alternate design that provides equal access for persons with disabilities; and to establish guidelines for design specifications not covered in the Americans with Disabilities Act Accessibility Guidelines, 36 C.F.R. Pt. 1191[.], as adopted and amended by the architectural access committee.

[(c) The committee may hire staff to assist in the performance of its duties. The staff shall be exempt from chapters 76 and 77.

(d)] (c) The [director of health shall] committee may adopt rules pursuant to chapter 91 necessary for the purposes of this section.”

SECTION 4. Section 347D-1, Hawaii Revised Statutes, is amended to read as follows:

**“§347D-1 Hawaii state coordinating council on deafness; establishment.**

(a) There is established a Hawaii state coordinating council on deafness within the department of health for administrative purposes. The council shall consist of [thirteen] five members, [seven] three of whom shall be deaf, hard-of-hearing, or deaf-blind persons, or immediate family members of deaf, hard-of-hearing, or deaf-blind persons[.] knowledgeable about communication access. Two members may be certified or locally screened interpreters.

(b) Members shall be appointed by the governor without the necessity of the advice and consent of the senate and shall serve at the pleasure of the governor.

[(c) Members appointed shall include at least one resident from each of the counties of Honolulu, Hawaii, Maui, and Kauai.

(d) Seven or more members shall constitute a quorum to conduct business and a concurrence of the majority of the members of the quorum shall be necessary to validate any act of the council.

(e) Members shall elect the officers of the council.

(f) Members shall serve without compensation, but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(g)] (c) Interpreters who serve as council members shall not be hired to interpret at any council meetings.”

SECTION 5. Section 347D-3, Hawaii Revised Statutes, is amended to read as follows:

**“§347D-3 Responsibility of council for [interpreter services.] communication access.** The council shall establish guidelines for the utilization of interpreter or other communication access services by deaf, hard-of-hearing, or deaf-blind persons in state programs and activities, including the qualifications of persons who may receive the services[, and the qualifications and recommended fee schedule of [interpreters] persons who may provide communication access services[, and the amount of payments to interpreters. The guidelines shall be consistent with Section 504 of the federal Rehabilitation Act of 1973, Public Law 93-112, as amended, for state programs and activities that receive federal financial assistance]. The council shall maintain a list of providers of communication access services and their level of qualification.”

SECTION 6. Section 348E-2, Hawaii Revised Statutes, is amended to read as follows:

**“§348E-2 Commission on persons with disabilities.** There is established the commission on persons with disabilities within the department of health for administrative purposes, to be composed of nine members to be appointed by the governor for staggered terms subject to section 26-34. The members of the commission shall include at least five persons with various disabling conditions, or parents or guardians of persons with disabilities. The members appointed shall include at least one resident from each of the counties of Honolulu, Hawaii, Maui, and Kauai. [Five or more members shall constitute a quorum to do business and a concurrence of the majority of the members of the quorum shall be necessary to validate any act of the commission.]

The members shall serve without compensation, but shall be reimbursed their necessary and reasonable expenses incurred in the performance of their duties, including travel expenses. [The chairperson shall be elected annually by the members; provided that no member may serve as chairperson for more than two consecutive terms.]”

SECTION 7. Section 348E-6, Hawaii Revised Statutes, is amended to read as follows:

**“[§348E-6] Staff.** The commission may hire staff to assist in the performance of its duties[;] under sections 103-50 and 348E-3; provided that [volunteer assistance shall be utilized to the greatest possible extent.] staff shall also assist in the implementation of sections 103-50.5 and 347D-3. The staff of the commission shall be hired without regard to chapters 76 and 77[; provided that salaries shall be determined in consultation with the director of human resources development]. Hired staff shall be eligible for participation in employee plans generally inuring to the benefit of state employees.”

SECTION 8. Section 347D-5, Hawaii Revised Statutes, is repealed.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 10. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 164**

H.B. NO. 401

A Bill for an Act Relating to Environmental Protection.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 169, Session Laws of Hawaii 1994, is amended by amending section 9 to read as follows:

**“SECTION 9.** This Act shall take effect on July 1, 1994 and shall be repealed on July 1, [1996;] 2000; provided that:

- (1) Sections 321-11.5, 321-15, 342F-14, 466J-4, and 466J-5, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 30, 1994; and

- (2) The director of health shall transfer to the credit of the state general fund, all unexpended or unencumbered balances remaining in the environmental health program enhancement and education fund, prior to June 30, [1996.] 2000.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect June 30, 1996.

(Approved June 17, 1996.)

## ACT 165

H.B. NO. 871

A Bill for an Act Relating to Time Shares.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 514E-29, Hawaii Revised Statutes, is amended to read as follows:

**“§514E-29 Association[.]; lien for delinquent assessments.** (a) All time share plans shall have an association which shall be a nonprofit corporation. Each owner shall be a member of the association.

(b) The association may levy regular, special, and other assessments in accordance with its governing documents. Any regular, special, or other assessment, and any late charges, interest, and costs of collection, including reasonable attorneys’ fees, assessed by the association in accordance with its governing documents, shall be a debt of the owner of the time share interest at the time the assessment or other sums are levied.

(c) The amount of the assessment, plus any late charges, interest, costs of collection, and reasonable attorneys’ fees, assessed by the association and chargeable to any owner of a time share interest, shall be a lien on the owner’s time share interest.

(d) Notice of any delinquent lien created pursuant to subsection (c) shall be recorded in the bureau of conveyances and upon recordation shall be prior to all other liens, except:

- (1) Liens for taxes and assessments lawfully imposed by governmental authority against the time share interest;
- (2) All sums unpaid on any mortgage of record encumbering the time share interest which was recorded prior to the recordation of a notice of a lien by the association; and
- (3) For a time share interest subject to a condominium property regime, the lien of the association of apartment owners created pursuant to section 514A-90.

(e) A lien created pursuant to subsection (c) may be enforced by the association in any manner permitted by law, including:

- (1) Foreclosure by an action in like manner as a mortgage of real property; or
- (2) Foreclosure under power of sale, if the power of sale is contained in the governing documents of the association, or in the original deed of the time share interest;



provided that the procedures and notice requirements contained in chapter 667 shall govern. The plan manager or board of directors of the association, acting on behalf of the owners, unless prohibited by the project instruments, may bid on the time share interest at the foreclosure sale and acquire and hold, lease, mortgage, and convey the same.

(f) Where the association or other purchaser obtains title to the time share interest as a result of the foreclosure of the association's lien, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the expenses or assessments by the association chargeable to the time share interest which became due prior to the acquisition of title to the time share interest by the acquirer. Notwithstanding the immediately preceding sentence, the unpaid share of expenses or assessments shall be deemed to be expenses collectible from all of the time share owners, including the acquirer and the acquirer's successors and assigns.

(g) Nothing in this section prohibits the association from bringing an action to recover a money judgment against the owner of a time share interest for unpaid assessments and expenses without first either foreclosing or waiving the association's lien securing the same."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

## ACT 166

H.B. NO. 1148

A Bill for an Act Relating to the Governor's Agriculture Coordinating Committee.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature recognizes that due to increased competition and changes in the global market, many traditional agricultural users in Hawaii are facing declining economic prospects in the foreseeable future. The closures of several sugar plantations in recent years throughout the State emphasize the need for a concerted effort to plan for the future use of these large acreages of vacant agricultural lands.

The legislature finds that these events offer an opportunity to transform agriculture from sugar and pineapple to an expanded, fully-diversified, and environmentally-enhancing industry that is competitive in global markets. Opportunities for such a transformation exist due to the expanded availability of valuable agricultural lands, water, and infrastructure assets that must be preserved and utilized to keep these lands in agricultural use, thereby strengthening and maintaining the State's economy and preserving open space.

The legislature further finds that such a transformation is necessary for economic diversity and growth; maintenance of the stability of rural communities; and public health and safety; and may result in more products being produced for the local market, thereby reducing the need for those products to be imported into the State and more products for export, thereby injecting more dollars into the State's economy.

The purpose of this Act is to:

- (1) Abolish the governor's agriculture coordinating committee;

- (2) Transfer the functions and duties of the governor's agriculture coordinating committee to the board of agriculture, and upon completion of the Hawaii agribusiness plan and upon approval of the plan by the board of the agribusiness development corporation, transfer the functions, duties, positions, and funding of the governor's agriculture coordinating committee to the agribusiness development corporation;
- (3) Increase the members of the board of agriculture to ten members to reflect those members who are currently members of the governor's agriculture coordinating committee; and
- (4) Allow fiscal flexibility to:
  - (a) Maximize the use of agriculture-related funds;
  - (b) Realize cost-savings; and
  - (c) Provide for agricultural emergency needs.

The abolition of the governor's agriculture coordinating committee consolidates public resources devoted to agriculture, allowing these resources to be more efficiently and effectively deployed. This transfer also provides more flexibility in meeting the challenges involved in the transformation of agriculture within the State of Hawaii.

SECTION 2. Section 26-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of agriculture shall be headed by an executive board to be known as the board of agriculture.

The board shall consist of [eight] ten members[, one];

- (1) One who shall be a resident of the county of Hawaii[, one];
- (2) One who shall be a resident of the county of Maui[, one];
- (3) One who shall be a resident of the county of Kauai[, four];
- (4) Four at large[, and the];
- (5) The chairperson of the board of land and natural resources, who shall serve as an ex officio voting member[.];
- (6) The director of business, economic development, and tourism, who shall serve as an ex officio voting member; and
- (7) The dean of the University of Hawaii college of tropical agriculture and human resources, who shall serve as an ex officio voting member.

The majority of the members of the board shall be from the agricultural community or the agricultural support sector. The appointment, tenure, and removal of the members and the filling of vacancies on the board shall be as provided in section 26-34. The governor shall appoint a chairperson of the board from the members.”

SECTION 3. Section 141-2, Hawaii Revised Statutes, is amended to read as follows:

“§141-2 Rules. Subject to chapter 91 the department of agriculture shall [make] adopt, amend, and repeal rules not inconsistent with law, for and concerning:

- (1) The introduction, transportation, and propagation of trees, shrubs, herbs, and other plants;
- (2) The quarantine, inspection, fumigation, disinfection, destruction, or exclusion, either upon introduction into the State, or at any time or place within the State, of any nursery-stock, tree, shrub, herb, vine, cut-flower, cutting, graft, scion, bud, seed, leaf, root, or rhizome; any nut, fruit, or vegetable; any grain, cereal, or legume in the natural or raw state; any moss, hay, straw, dry-grass, or other forage; any unmanufactured log, limb, or timber; or any other plant growth or plant

product unprocessed or in the raw state; any sand, soil, or earth; any live bird, reptile, insect, or other animal, in any stage of development, that is in addition to the so-called domestic animals, which are provided for in section 142-2; and any box, barrel, crate, or other containers in which the articles, substances, or objects have been transported or contained, and any packing material used in connection therewith, which is or may be diseased or infested with insects or likely to assist in the transmission or dissemination of any insect or plant disease injurious, harmful, or detrimental, or likely to become injurious, harmful, or detrimental to the agricultural or horticultural industries or the forests of the State, or which is or may be in itself injurious, harmful, or detrimental to the same (included therein may be rules governing the shipping of any of the articles, substances, or objects enumerated above in this section between different localities on any one of the islands within the State);

- (3) The prohibition of importation into the State, from any or all foreign countries, or from other parts of the United States, or the shipment from one island within the State to another island therein, or the transportation from one part or locality of any island to another part or locality of the same island, of any specific article, substance, or object or class of articles, substances or objects, among those enumerated above in this section, which is diseased or infested with insects or likely to assist in the transmission or dissemination of any insect or plant disease injurious, harmful, or detrimental or likely to be injurious, harmful, or detrimental to the agricultural or horticultural industries, or the forests of the State, or which is or may be in itself injurious, harmful, or detrimental to the same;
- (4) The manner in which agricultural product promotion and research activities may be undertaken, after coordinating with the [governor's agriculture coordinating committee.] agribusiness development corporation.

All rules [made as aforesaid,] adopted under this section shall have the force and effect of law."

SECTION 4. Section 201-3, Hawaii Revised Statutes, is amended to read as follows:

**"§201-3 Specific research and promotional functions of the department.**

Without prejudice to its general functions and duties the department of business, economic development, and tourism shall have specific functions in the following areas:

- (1) Agricultural development. The department shall:
  - (A) Conduct surveys and feasibility studies to determine the need for and value of additional research in the production of agricultural commodities, and the processing and marketing of agricultural food products;
  - (B) Promote an informational program directed to the consuming public both in Hawaii and in the mainland United States relative to the qualities of agricultural commodities produced in Hawaii and in the maximum utilization of same, including processed agricultural food products; and
  - (C) Make grants to and contracts with appropriate agencies, firms, or individuals for surveys, studies, research, and promotion.

With respect to agricultural development, the department's activities shall be consistent with the policies, programs, and activities of the [governor's agriculture coordinating committee.] board of agriculture and the agribusiness development corporation;

- (2) Industrial development. The department shall determine through technical and economic surveys the profit potential of new or expanded industrial undertakings; develop through research projects and other means new and improved industrial products and processes; promote studies and surveys to determine consumer preference as to design and quality and to determine the best methods of packaging, transporting, and marketing the State's industrial products; disseminate information to assist the present industries of the State, to attract new industries to the State, and to encourage capital investment in present and new industries in the State; assist associations of producers and distributors of industrial products to introduce such products to consumers; and make such grants or contracts as may be necessary or advisable to accomplish the foregoing[.];
- (3) Land development. The department shall encourage the most productive use of all land in the State in accordance with a general plan developed by the department; encourage the improvement of land tenure practices on leased private lands; promote an informational program directed to landowners, producers of agricultural and industrial commodities, and the general public regarding the most efficient and most productive use of the lands in the State; and make such grants or contracts as may be necessary or advisable to accomplish the foregoing[.];
- (4) Credit development. The department shall conduct a continuing study of agricultural and industrial credit needs; encourage the development of additional private and public credit sources for agricultural and industrial enterprises; promote an informational program to acquaint financial institutions with agricultural and industrial credit needs and the potential for agricultural and industrial expansion, and inform producers of agricultural and industrial products as to the manner in which to qualify for loans; and make such grants or contracts as may be necessary or advisable to accomplish the foregoing[.]; and
- (5) Promotion. The department shall disseminate information developed for or by the department pertaining to economic development to assist present industry in the State, attract new industry and investments to the State, and assist new and emerging industry with good growth potential or prospects in jobs, exports, and new products. The industrial and economic promotional activities of the department may include the use of literature, advertising, demonstrations, displays, market testing, lectures, travel, motion picture and slide films, and such other promotional and publicity devices as may be appropriate.

The department shall be the central agency to coordinate film permit activities in the State."

SECTION 5. Chapter 164, Hawaii Revised Statutes, is repealed.

SECTION 6. There is established within the department of agriculture a program ID for agricultural research, marketing, and promotion. As used in this section, "program ID" means the unique identifier for a specific program, and consists of the abbreviation for the organization responsible for carrying out the program, followed by the organization number for the program.

SECTION 7. All rights, powers, functions, and duties of the governor's agriculture coordinating committee shall be transferred to the board of agriculture; provided that all rights, powers, functions, and duties of the governor's agriculture coordinating committee, which were transferred to the board of agriculture, shall be transferred to the agriculture development corporation upon:

- (1) Completion of the Hawaii agribusiness plan under section 163D-5, Hawaii Revised Statutes; and
- (2) Approval of the plan by the board of directors of the agribusiness development corporation.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act.

SECTION 8. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the governor's agriculture coordinating committee relating to the functions transferred to the board of agriculture shall be transferred with the functions to which they relate; provided that all appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the governor's agriculture coordinating committee relating to the functions transferred to the board of agriculture, shall be transferred to the agriculture development corporation upon:

- (1) Completion of the Hawaii agribusiness plan under section 163D-5, Hawaii Revised Statutes; and
- (2) Approval of the plan by the board of directors of the agribusiness development corporation.

SECTION 9. The chairperson of the board of agriculture shall expedite all projects of the governor's agriculture coordinating committee, especially emergency actions.

SECTION 10. The board of agriculture is authorized to transfer funds between appropriations as deemed necessary by the board of agriculture.

SECTION 11. The chairperson of the board of agriculture shall submit to the legislature no later than twenty days prior to the convening of the regular session of 1997, a report on the transfer, including:

- (1) A complete accounting of funds transferred from the governor's agriculture coordinating committee;
- (2) A complete accounting of expenditures made with those funds;
- (3) The results of each legislative appropriation initially made to the governor's agriculture coordinating committee and transferred to the board of agriculture; and
- (4) Future needs for funding and project timelines regarding functions previously administered by the governor's agriculture coordinating committee.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 13. This Act shall take effect on July 1, 1996.

(Approved June 17, 1996.)

ACT 167

H.B. NO. 2526

A Bill for an Act Relating to Domestic and Sexual Violence.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 346-14, Hawaii Revised Statutes, is amended to read as follows:

“§346-14 **Duties generally.** Except as otherwise provided by law, the department of human services shall:

- (1) Establish and administer programs and standards, and adopt rules as deemed necessary for all public assistance programs;
- (2) Establish, extend, and strengthen services for the protection and care of neglected children and children in danger of becoming delinquent;
- (3) Establish and administer programs, and adopt rules as deemed necessary, for the prevention of domestic and sexual violence and the protection and treatment of victims of domestic and sexual violence;
- [(3)] (4) Assist in preventing family breakdown;
- [(4)] (5) Place, or cooperate in placing, neglected children in suitable private homes or institutions and place, or cooperate in placing, children in suitable adoptive homes;
- [(5)] (6) Have authority to establish, maintain, and operate receiving homes for the temporary care and custody of neglected children until suitable plans are made for their care; and accept from the police and other agencies, for temporary care and custody, any neglected child until satisfactory plans are made for the child;
- [(6)] (7) Administer the medical assistance programs for eligible public welfare and other medically needy individuals by establishing standards, eligibility, and health care participation rules, payment methodologies, reimbursement allowances, systems to monitor recipient and provider compliance, and assuring compliance with federal requirements in order to maximize federal financial participation;
- [(7)] (8) Cooperate with the federal government in carrying out the purposes of the Social Security Act and in other matters of mutual concern pertaining to public welfare, public assistance, and child welfare services, including the making of reports, the adoption of methods of administration, and the making of rules as are found by the federal government, or any properly constituted authority thereunder, to be necessary or desirable for the efficient operation of the plans for public welfare, assistance, and child welfare services or as may be necessary or desirable for the receipt of financial assistance from the federal government;
- [(8)] (9) Carry on research and compile statistics relative to public and private welfare activities throughout the State, including those dealing with dependence, defectiveness, delinquency, and related problems;
- [(9)] (10) Develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare problems;

- [(10)] (11) Adopt rules governing the procedure in hearings, investigations, recording, registration, determination of allowances, and accounting and conduct other activities as may be necessary or proper to carry out this chapter;
- [(11)] (12) Supervise or administer any other activities authorized or required by this chapter, including the development of the staff of the department through in-service training and educational leave to attend schools and other appropriate measures, and any other activities placed under the jurisdiction of the department by any other law;
- [(12)] (13) Make, prescribe, and enforce policies and rules governing the activities provided for in section 346-31 it deems advisable, including the allocation of moneys available for assistance to persons assigned to work projects among the several counties or to particular projects where the apportionment has not been made pursuant to other provisions of law, if any, governing expenditures of the funds;
- [(13)] (14) Determine the appropriate level for the Hawaii security net, by developing a tracking and monitoring system to determine what segments of the population are not able to afford the basic necessities of life, and advise the legislature annually regarding the resources required to maintain the security net at the appropriate level;
- [(14)] (15) Subject to the appropriation of state funds and availability of federal matching assistance, expand optional health care to low-income persons as follows: pregnant women and infants under one year of age living in families with incomes up to one hundred eighty-five per cent of the federal poverty level and without any asset restrictions, children under six years of age living in families with incomes up to one hundred thirty-three per cent of the federal poverty level and without any asset restrictions, older children to the extent permitted under optional federal medicaid rules, elder persons, aliens, the homeless, and other handicapped and medically needy persons; and
- [(15)] (16) Subject to the appropriation of state funds and availability of federal matching assistance, establish the income eligibility level for the medically needy program at one hundred thirty-three per cent of the assistance allowance.’’

SECTION 2. Section 321-1, Hawaii Revised Statutes, is amended to read as follows:

**“§321-1 General powers and duties of the department.** (a) The department of health shall have general charge, oversight, and care of the health and lives of the people of the State.

(b) The department shall have authority in matters of quarantine and other health matters and may declare and enforce quarantine when none exists and modify or release quarantine when it is established.

(c) When it is determined that there is imminent danger of epidemic or serious outbreak of communicable disease, the department may refuse, modify, or limit attendance at any school in the State.

(d) When in the judgment of the director, there is deemed to be a potential health hazard, the department, through the director, may take precautionary measures to protect the public through the imposition of an embargo or the detention of products regulated by the department, or the removal of products regulated by the department from the market, or the declaration of quarantine; provided that the director must find evidence of a health hazard within seventy-two hours of the action taken or rescind the action. The director shall make public the findings.

(e) All county health authorities, sheriffs, police officers, and all other officers and employees of the State, and every county thereof, shall enforce the rules of the department. All such powers in health matters as have been or may be conferred upon any county shall be concurrent with those of the department.

(f) The department may establish charges and collect fees for any of its services; provided that the department shall not refuse to provide services to any person due to the person's inability to pay the fee for the service. The department, through the director, shall make an annual report to the governor, showing in detail all its expenditures and transactions, and such other information regarding the public health as the department may deem of special interest.

(g) The department, during the prevalence of any severe pestilence or epidemic, shall publish a weekly report of the public health.

(h) The department shall establish and administer programs, and adopt rules as deemed necessary, for the prevention of domestic and sexual violence and the protection and treatment of victims of domestic and sexual violence."

SECTION 3. There is hereby created an ad hoc committee on domestic and sexual violence, to be convened and chaired by the executive director of the state commission on the status of women. The committee shall be composed of the director of human services, the director of health, and the attorney general, or their designees, and the administrators of private provider organizations having contracts with the judiciary in the area of domestic or sexual violence.

The chief justice shall continue all existing programs, under the judiciary's auspices, for the prevention of domestic and sexual violence and the protection and treatment of victims of domestic and sexual violence. The chief justice, in consultation with the ad hoc committee on domestic and sexual violence, shall develop a transition plan for the continuation of these programs under the auspices of the executive branch. The chief justice shall submit the transition plan, along with proposed legislation necessary to implement the plan, to the legislature no later than twenty days prior to the convening of the 1997 regular session. No existing judiciary program for the prevention of domestic and sexual violence and the protection and treatment of victims of domestic and sexual violence shall be terminated, transferred, or diminished in any manner in the absence of the enactment of legislation to such effect. The ad hoc committee on domestic and sexual violence shall be repealed on June 30, 1997.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

## ACT 168

H.B. NO. 2603

A Bill for an Act Relating to Jurors.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 612-4, Hawaii Revised Statutes, is amended to read as follows:



“[[§612-4]] Grounds of qualification and disqualification. (a) A prospective juror is [disqualified] qualified to serve as a juror if the prospective juror:

- (1) Is [not] a citizen of the United States and of the State, eighteen years old, and a resident of the circuit; and
- (2) Is [unable] able to read, speak, and understand the English language[.];
- (b) A prospective juror is disqualified to serve as a juror if the prospective

juror:

- [(3)] (1) Is incapable, by reason of the prospective juror’s physical or mental disability, of rendering satisfactory jury service; but a person claiming this disqualification may be required to submit a physician’s certificate as to the disability, and the certifying physician is subject to inquiry by the court at its discretion; [or]
- [(4)] (2) Has been convicted of a felony in a state or federal court and not pardoned[.]; or
- (3) Fails to meet the qualifications in subsection (a).”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

## ACT 169

H.B. NO. 2868

A Bill for an Act Relating to Highway Safety.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-131, Hawaii Revised Statutes, is amended to read as follows:

“**§286-131 Unlawful use of license.** [It shall be a misdemeanor for any person:] No person shall:

- (1) [To display] Display or permit to be displayed or have in the person’s possession any canceled, revoked, suspended, fictitious, or fraudulently altered driver’s license;
- (2) [To lend] Lend the person’s driver’s license to any other person or knowingly permit the use thereof by another;
- (3) [To display] Display or represent as one’s own any driver’s license not issued to the person;
- (4) [To fail] Fail or refuse to surrender to the examiner of drivers, upon the examiner’s lawful demand, any driver’s license [which] that has been suspended, revoked, or canceled;
- (5) [To use] Use a false or fictitious name in any application for a driver’s license or [to] knowingly make a false statement or [to] knowingly conceal a material fact, or otherwise commit a fraud in any such application; or
- (6) [To manufacture,] Manufacture, sell, distribute, use, or have in the person’s possession any reproduction, imitation, or facsimile of any driver’s license or any identification with the appearance of a driver’s license.”

SECTION 2. Section 286-132, Hawaii Revised Statutes, is amended to read as follows:

**“§286-132 Driving while license suspended or revoked[; penalty].** Except as provided in section 291-4.5, [any] no resident or nonresident whose driver’s license, right, or privilege to operate a motor vehicle in this State has been canceled, suspended, or revoked[, and who drives] may drive any motor vehicle upon the highways of this State while [such] the license, right, or privilege remains canceled, suspended, or revoked[, shall be fined not less than \$250 but not more than \$1,000 or imprisoned not more than one year].”

SECTION 3. Section 286-136, Hawaii Revised Statutes, is amended to read as follows:

**“§286-136 Penalty.** [Whoever] (a) Except as provided in subsection (b), any person who violates section 286-102, 286-122, 286-130, 286-131, 286-132, 286-133, or 286-134 shall be fined not more than \$1,000 or imprisoned not more than [one year,] thirty days, or both. [Whoever] Any person who violates any other section in this part shall be fined not more than \$1,000.

(b) Any person who is convicted of violating section 286-102, 286-122, 286-130, 286-131, 286-132, 286-133, or 286-134 shall be subject to a maximum fine of \$1,000, or imprisoned not more than one year, or both, if the person has two or more prior convictions for the same offense in the preceding five year period.”

SECTION 4. Section 291C-161, Hawaii Revised Statutes, is amended to read as follows:

**“§291C-161 Penalties.** (a) It is a violation for any person to violate any of the provisions of this chapter except as otherwise specified in subsection (c) of this section and unless the violation is by other law of this State declared to be a felony, misdemeanor, or petty misdemeanor.

(b) Except as provided in subsection (c) of this section, every person who violates any provision of this chapter for which another penalty is not provided, shall be fined:

- (1) Not more than [ \$100 ] \$200 for a first conviction thereof;
- (2) Not more than [ \$200 ] \$300 for conviction of a second offense committed within one year after the date of the first offense; and
- (3) Not more than \$500 for conviction of a third or subsequent offense committed within one year after the date of the first offense;

provided that upon a conviction for a violation of section 291C-12, 291C-12.5, or 291C-12.6, the person shall be sentenced in accordance with that section.

(c) Every person who violates section 291C-13 or 291C-18 shall:

- (1) Be fined not more than [ \$100 ] \$200 or imprisoned not more than ten days for a first conviction thereof;
- (2) Be fined not more than [ \$200 ] \$300 or imprisoned not more than twenty days or both for conviction of a second offense committed within one year after the date of the first offense; and
- (3) Be fined not more than \$500 or imprisoned not more than six months or both for conviction of a third or subsequent offense committed within one year after the date of the first offense.

(d) The court may assess a sum not to exceed \$25 for the cost of issuing a penal summons upon any person who fails to appear at the place within the time specified in the citation issued to the person for any traffic violation.

(e) The court may require a person who violates any of the provisions of this chapter to attend a course of instruction in driver retraining as deemed appropriate by the court, in addition to any other penalties imposed.”

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

## ACT 170

H.B. NO. 3047

A Bill for an Act Relating to Criminal Damage to Property.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 708-820, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of criminal property damage in the first degree if [the]:

- (a) The person intentionally damages property and thereby recklessly places another person in danger of death or bodily injury[.]; or
- (b) The person intentionally damages the property of another, without the other’s consent, in an amount exceeding \$20,000.”

SECTION 2. Section 708-821, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of criminal property damage in the second degree if:

- (a) The person intentionally damages the property of another, without the other’s consent, by the use of widely dangerous means; or
- (b) The person intentionally damages the property of another, without the other’s consent, in an amount exceeding [\$500.] \$1,500.”

SECTION 3. Section 708-822, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of criminal property damage in the third degree if:

- (a) The person recklessly damages the property of another, without the other’s consent, by the use of widely dangerous means; or
- (b) The person intentionally damages the property of another, without the other’s consent, in an amount exceeding [\$100.] \$500.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

ACT 171

H.B. NO. 3086

A Bill for an Act Relating to Motor Vehicle Rentals.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to correct an error in House Bill No. 605 enacted by the legislature during the regular session of 1995, which was vetoed by the governor. Additionally, this bill will add an additional fueling option which may be offered by the motor vehicle rental companies.

SECTION 2. Section 437D-14, Hawaii Revised Statutes, is amended to read as follows:

**“[[§437D-14]] Fuel charges.** (a) Except as provided in this section, refueling charges are prohibited.

(b) Upon the lessee's return of the vehicle, if the amount of fuel remaining in the vehicle is less than the amount originally provided by the lessor, the lessor may charge the lessee to refuel the vehicle based upon the number of gallons or liters used by the lessee. The amount of fuel which may be charged to the lessee shall be calculated in one of two ways:

- (1) If the vehicle was delivered to the lessee with a full tank, the number of gallons or liters required to refill the tank[.]; or
- (2) If the vehicle was rented with less than a full tank, the number of gallons or liters less than the amount originally provided by the lessor according to the vehicle's gas gauge as read both before and after the lessee's use thereof, employing an appropriate chart showing the number of gallons or liters corresponding to the gas gauge readings. Each chart shall be specifically keyed to the model of car.

(c) Upon the lessee's return of the vehicle, if the amount of fuel remaining in the rental vehicle is greater than the amount originally provided by the lessor upon delivery of the vehicle to the lessee, the lessor shall credit the lessee an amount based on the gallons or liters added by the lessee, calculated by the method set forth in subsection (b)(2).

(d) In the event that the lessor has no reasonably accessible refueling facilities, the lessor is not required to give the credit to the lessee as described in subsection (c); provided that if no credit is given, the lessor shall disclose that fact to the lessee at the time the rental agreement is signed.

(e) The lessor shall provide the lessee with written notice of the amount to be credited, except as provided in subsection (d), or charged on a per gallon or per liter basis.

(f) The price per gallon or per liter which is charged for the amount of fuel required to refuel the vehicle, as provided in subsection (b), shall not exceed the [sum] average of the locally prevailing retail market price for similar fuel sold at self-service gasoline pumps by commercial gasoline dealers and a reasonable surcharge not to exceed one-half of that retail price.

(g) The per gallon or per liter amount which is credited pursuant to subsection (c), except as provided in subsection (d), may not be lower than the locally prevailing retail market price for similar fuel sold by commercial gasoline dealers.

(h) Nothing in this section shall prohibit the lessor from offering the lessee the option of purchasing, at the time of taking delivery of the vehicle, a full tank of fuel from the lessor at a price per gallon or per liter that shall not exceed the average of the locally prevailing retail market price for similar fuel sold at self-service gasoline pumps by commercial gasoline dealers; provided that the option includes the provisions that:

- (1) If the vehicle is driven one hundred miles or less, and the lessee has not returned the vehicle with a full tank of fuel, the lessee shall be credited for the amount charged to the lessee for the purchase of fuel when the lessee took delivery of the vehicle, and be charged in the method set forth in subsection (b); or
- (2) If the lessee returns the vehicle with a full tank of fuel, the lessee shall be credited for the amount charged to the lessee for the purchase of fuel when the lessee took delivery of the vehicle.

(i) No lessor or officer, employee, agent, or other representative of the lessor shall pay or receive a commission for selling any specific or particular options for fuel charges as contained within this section. Any violation of this section shall be an unfair or deceptive act or practice as provided in section 480-2. As used in this section, "commission" includes any compensation, bonus, award, or remuneration, whether direct, indirect, or otherwise, which is calculated by means of a formula, process, evaluation, or other mechanism which considers sales of options for fuel charges as a factor in any manner. "Commission" also includes any performance evaluation which could be used in determining promotions, raises, or other personnel decisions, or any other device which serves to encourage the sale of any specific or particular option for fuel charges."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

## ACT 172

H.B. NO. 3102

A Bill for an Act Relating to Contractors.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that there has been an abuse of the exemption from the contractors license requirements under chapter 444, Hawaii Revised Statutes, provided to property owners who build their own homes. While there is a legitimate need to allow property owners to build homes or improve their property for their own use without obtaining a contractors license, this exemption should not extend to individuals who construct and sell several homes over a short period of time since the licensing of contractors is required by law, in part, to ensure the safety of homes constructed for sale.

The legislature further finds that the experiences from Hurricane Iniki and its aftermath demonstrated the need for enhanced statutory protection against unlicensed contractors during natural disasters and in transactions involving elderly citizens.

SECTION 2. Chapter 444, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**“§444- Prosecution of criminal violations.** The regulated industries complaints office shall report any criminal violation of this chapter, including, but not limited to, criminal contempt of court, to the county prosecuting attorney’s office or the department of the attorney general for prompt prosecution.

**§444- State of disaster; acting as a contractor without a license; penalty.** Any person who violates section 444-9, in connection with the offer or performance of repairs to a residential or nonresidential structure for damage caused by a natural disaster in a political subdivision for which a state of disaster is proclaimed by the governor, may be punished by a fine of up to \$10,000, or imprisonment up to one year, or both, in addition to all other remedies or penalties.

**§444- Enhanced penalties when elderly persons are targeted.** If any person is found to have violated section 444-9 and the violation is committed against elderly persons, in addition to any other penalty set forth or imposed, the court may impose a fine of up to \$10,000, or imprisonment up to one year, or both. As used in this section, “elderly person” means a person who is sixty-five years of age or older.”

SECTION 3. Section 444-2, Hawaii Revised Statutes, is amended to read as follows:

**“§444-2 Exemptions.** This chapter shall not apply to:

- (1) Officers and employees of the United States, the State, or any [political subdivision] county while in the performance of their governmental duties;
- (2) Any person acting as a receiver, trustee in bankruptcy, personal representative, or any other person acting under any order or authorization of any court;
- (3) A person who sells or installs any finished products, materials, or articles of merchandise [which] that are not actually fabricated into and do not become a permanent fixed part of the structure, or to the construction, alteration, improvement, or repair of personal property;
- (4) Any project or operation for which the aggregate contract price for labor, materials, taxes, and all other items is [equal to or less] not more than \$1,000. This exemption shall not apply in any case [wherein] where a building permit is required regardless of the aggregate contract price, nor where the undertaking is only a part of a larger or major project or operation, whether undertaken by the same or a different contractor or in which a division of the project or operation is made in contracts of amounts [equal to or less] not more than \$1,000 for the purpose of evading this chapter or otherwise;
- (5) A registered architect or professional engineer acting solely in the person’s professional capacity;
- (6) Any person who engages in the activities regulated in this chapter as an employee with wages as the person’s sole compensation;
- (7) Owners or lessees of property who build or improve residential, farm, industrial, or commercial buildings or structures on property for their own use, or for use by their grandparents, parents, siblings, or children and who do not offer the buildings or structures for sale or lease; provided that this exemption shall not apply to electrical or plumbing

work[, which] that must be performed only by persons or entities licensed under this chapter, or to the owner or lessee of the property if the owner or lessee is licensed under chapter 448E. In all actions brought under this paragraph, proof of the sale or lease, or offering for sale or lease, of the structure [within] not more than one year after completion is prima facie evidence that the construction or improvement of the structure was undertaken for the purpose of sale or lease; provided that this provision shall not apply to residential properties sold or leased to employees of the owner or lessee; provided further that in order to qualify for this exemption the owner or lessee must register for the exemptions as provided in section 444-9.1. Any owner or lessee of property found to have violated [the provisions of] this paragraph shall not be permitted to engage in any activities pursuant to this paragraph or to register under section 444-9.1 for a period of three years[;]. There is a presumption that an owner or lessee has violated this section, when the owner or lessee obtains an exemption from the licensing requirements of section 444-9 more than once in two years;

- (8) Any joint venture if all members thereof hold licenses issued under this chapter;
- (9) Any project or operation where it is determined by the board that less than ten persons are qualified to perform the work in question and that [such] the work does not pose a potential danger to public health, safety, and welfare; or
- (10) Any public works project that requires additional qualifications beyond those established by the licensing law and which is deemed necessary and in the public interest by the contracting agency.”

SECTION 4. Section 444-9.1, Hawaii Revised Statutes, is amended to read as follows:

**“§444-9.1 Issuance of building permits; owner-builder registration. (a)**

Each county or other local subdivision of the State which requires the issuance of a permit as a condition precedent to the construction, alteration, improvement, demolition, or repair of any building or structure shall also require that each applicant for such a permit file as a condition to the issuance of a permit a statement that the applicant and all specialty contractors are licensed under this chapter, giving the license numbers and stating that the licenses are in full force and effect, or, if the applicant is exempt from this chapter, the basis for the claimed exemption; provided that if the applicant claims an exemption under section 444-2(7), the applicant shall also be required to certify that the building or structure is for the applicant’s personal use and not for use or occupancy by the general public. Each county or local subdivision of the State shall maintain an owner-builder registration list which shall contain the following information: (1) the name of any owner or lessee who claims an exemption from this chapter as provided in section 444-2(7); (2) the address of the property where exempt building or improvement activity is to occur; (3) a description of the type of building or improvement activity to occur; (4) the approximate dates of construction activity; and (5) whether any electrical or plumbing work is to be performed and if so, the name and license number of the person or entity who will do the work. The absence of such registration is prima facie evidence that the exemption in section 444-2(7) does not apply.

(b) The county shall verify the license against a list of licensed contractors provided by the state contractors licensing board, which list shall be updated at least quarterly. The county shall also verify that the applicant is in fact the contractor so licensed or the contractor’s duly authorized agent.

(c) To qualify for the exemption under section 444-2(7), the county shall provide the applicant with a disclosure statement in substantially the following form:

“Disclosure Statement

State law requires construction to be done by licensed contractors. You have applied for a permit under an exemption to that law. The exemption provided in section 444-2(7), Hawaii Revised Statutes, allows you, as the owner or lessee of your property, to act as your own general contractor even though you do not have a license. You must supervise the construction yourself. You must also hire licensed subcontractors. The building must be for your own use and occupancy. It may not be built for sale or lease. If you sell or lease a building you have built yourself within one year after the construction is complete, the law will presume that you built it for sale or lease, which is a violation of the exemption, and you may be prosecuted for this. It is your responsibility to make sure that subcontractors hired by you have licenses required by state law and by county licensing ordinances. Electrical or plumbing work must be performed by contractors licensed under chapters 448E and 444, Hawaii Revised Statutes. Any person working on your building who is not licensed must be your employee which means that you must deduct F.I.C.A. and withholding taxes and provide workers’ compensation for that employee, all as prescribed by law. Your construction must comply with all applicable laws, ordinances, building codes, and zoning regulations. If you violate section 444-2(7) you may be fined \$5,000 or forty per cent of the appraised value of the building as determined by the county tax appraiser, whichever is greater, for the first offense; and \$10,000 or fifty per cent of the appraised value of the building as determined by the county tax appraiser, whichever is greater for any subsequent offense.”

The county shall not issue a building permit to the owner-applicant until the applicant signs a statement that the applicant has read and understands the disclosure form.

(d) A county building inspector or other building official shall report to the regulated industries complaints office the name and address of any person, who, in the opinion of the building inspector or official, has violated this chapter by accepting or contracting to accomplish work which would classify the person as a contractor under this chapter.”

SECTION 5. Section 444-23, Hawaii Revised Statutes, is amended to read as follows:

**“§444-23 Violation; penalties.** (a) Any licensee who contracts outside the appropriate scope of classification for which the licensee is licensed shall be fined \$500 for the first offense, \$1,000 for the second offense, and not less than \$1,500 or more than \$2,000 for any subsequent offense.

(b) Any licensee who violates section 444-9.3 or 444-17(17) shall be fined up to \$25,000 or up to the full amount of the contract price for each offense, whichever is greater.

(c) Except as provided in subsections (a) [and], (b), (d), and (e), any person who violates or fails to comply with [any of the provisions of] this chapter shall be fined not less than \$100 [and not] or more than \$5,000 for each violation; provided that [persons who violate] any person who violates section 444-9 shall be fined:



- (1) \$500 or forty per cent of the total contract price, whichever is greater, for the first offense;
- (2) \$1,000 or forty per cent of the total contract price, whichever is greater, for the second offense; and
- (3) \$5,000 or forty per cent of the total contract price, whichever is greater, for any subsequent offense.

(d) Any licensee who violates, or whose employee violates, section 444-17(18), 444-17(19), or 444-17(20), shall be fined \$75 for the first offense, \$150 for the second offense, and not less than \$300 [to] or more than \$1,000 for each subsequent offense; provided that each unit serviced in violation of section 444-17(18) or [section] 444-17(19) and each instance of releasing CFCs in violation of section 444-17(20) shall constitute a separate offense.

(e) Any person who violates section 444-2(7), shall be fined:

- (1) \$5,000 or forty per cent of the appraised value of the building as determined by the county tax appraiser, whichever is greater, for the first offense; and
- (2) \$10,000 or fifty per cent of the appraised value of the building as determined by the county tax appraiser, whichever is greater, for any subsequent offenses.'

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 173**

H.B. NO. 3153

A Bill for an Act Relating to Elections.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 11, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§11- Constitutional amendments, proposed.** Any constitutional amendment proposed by the legislature shall include in final form the exact constitutional ratification question to be printed on a ballot. The constitutional ratification question shall be phrased in a manner to enable voters to express their choice on the constitutional amendment by providing a “yes” or “no” response. The language and meaning of a constitutional amendment shall be clear and it shall be neither misleading nor deceptive.”

SECTION 2. Section 11-2, Hawaii Revised Statutes, is amended to read as follows:

**“§11-2 Chief election officer; duties.** (a) The chief election officer shall supervise all state elections. The chief election officer may delegate responsibilities in state elections within a county to the clerk of that county or to other specified persons.

(b) The chief election officer shall be responsible for the maximization of registration of eligible electors throughout the State. In maximizing registration, the chief election officer shall make an effort to equalize registration between districts, with particular effort in those districts in which the chief election officer determines registration is lower than desirable. The chief election officer, in carrying out this function, may make surveys, carry on house to house canvassing, and assist or direct the clerk in any other area of registration.

(c) The chief election officer shall maintain data concerning registered voters, elections, apportionment, and districting. The chief election officer shall use this data to assist the reapportionment commission provided for under Article IV of the Constitution.

(d) The chief election officer shall be responsible for public education with respect to voter [registration and information.] materials, including the publication and dissemination of voting materials in the language of a language minority group as required by the Voting Rights Language Assistance Act of 1992, P.L. 102-344.

(e) Upon the certification of any bill that sets forth a question for vote by the electorate, the chief election officer shall coordinate the preparation of appropriate voter education materials with the legislative reference bureau. The legislative reference bureau shall be responsible for the interpretation of the bill and shall submit to the chief election officer, not later than ninety days prior to the general election, the following items in final form:

- (1) A summary, factsheet, and digest of the proposed constitutional amendment, which includes the purpose and intent of the proposed constitutional amendment, and ramifications of the proposed constitutional amendment if ratified by the electorate; and
- (2) Arguments for and against ratification of the proposed constitutional amendment.

[(e)] (f) The chief election officer shall adopt rules governing elections in accordance with chapter 91.”

SECTION 3. Act 27, Special Session Laws of Hawaii 1995, is amended by amending section 4 to read as follows:

“SECTION 4. Section 11-2, Hawaii Revised Statutes, is amended to read as follows:

**“§11-2 Chief election officer; duties.** (a) The chief election officer shall supervise all state elections. The chief election officer may delegate responsibilities in state elections within a county to the clerk of that county or to other specified persons.

(b) The chief election officer shall be responsible for the maximization of registration of eligible electors throughout the State. In maximizing registration, the chief election officer shall make an effort to equalize registration between districts, with particular effort in those districts in which the chief election officer determines registration is lower than desirable. The chief election officer, in carrying out this function, may make surveys, carry on house to house canvassing, and assist or direct the clerk in any other area of registration.

(c) The chief election officer shall maintain data concerning registered voters, elections, apportionment, and districting. The chief election officer shall use this data to assist the reapportionment commission provided for under Article IV of the Constitution.

(d) The chief election officer shall be responsible for public education with respect to voter [registration and information.] materials, including the publication

and dissemination of voting materials in the language of a language minority group as required by the Voting Rights Language Assistance Act of 1992, P.L. 102-344.

(e) Upon the certification of any bill that sets forth a question for vote by the electorate, the chief election officer shall coordinate the preparation of appropriate voter education materials with the legislative reference bureau. The legislative reference bureau shall be responsible for the interpretation of the bill and shall submit to the chief election officer, not later than ninety days prior to the general election, the following items in final form:

- (1) A summary, factsheet, and digest of the proposed constitutional amendment, which includes but is not limited to the purpose and intent of the proposed constitutional amendment, and ramifications of the proposed constitutional amendment if ratified by the electorate; and
- (2) Arguments for and against ratification of the proposed constitutional amendment.

[(e)] (f) The chief election officer shall adopt rules governing elections in accordance with chapter 91.”

SECTION 4. Section 11-112, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The ballot may include questions concerning proposed state constitutional amendments, proposed county charter amendments, or proposed initiative or referendum issues. [When the legislature passes a bill to submit a proposed constitutional amendment to the electorate, the bill shall contain the exact question that is to be printed on the ballot. The question shall be phrased to require a “yes” or “no” response by the voter.]”

SECTION 5. Section 12-4, Hawaii Revised Statutes, is amended to read as follows:

**“§12-4 Nomination papers: qualifications of signers.** (a) No person shall sign the nomination papers of more than one candidate, partisan or nonpartisan, for the same office, unless there is more than one office in a class in which case no person shall sign papers for more than the actual number of offices in a class. Nomination papers shall be construed in this regard according to priority of filing, and the name of any person appearing thereon shall be counted only so long as this provision is not violated, and not thereafter.

(b) No name on nomination papers shall be counted, unless the signer is a registered voter[,], and is eligible to vote for the candidate [at the next election. To determine if the signers are eligible to vote for the candidate, the chief election officer or clerk may use lists prepared in accordance with section 11-24]. The chief election officer or clerk shall use the most currently compiled general county register available at the time the nomination paper is presented for filing to determine the eligibility of the registered voters to sign for the candidate. At the time of filing, the chief election officer or clerk may reject the candidate’s nomination paper for lack of sufficient signers who are eligible to vote for the candidate.

(c) Any registered voter who, after signing a nomination paper, seeks to withdraw the voter’s signature shall do so by providing written notice to the chief election officer, or clerk in the case of a county office, any time before the filing of the candidate’s nomination paper; provided that the notice is received by the chief election officer, or clerk in the case of a county officer, no later than 4:30 p.m. on the fourth business day prior to the close of filing pursuant to section 12-6. The written notice shall include the voter’s name, social security number, residence address, date of birth, the voter’s signature, the name of the candidate, and a statement that the

voter wishes to remove the voter's signature from the candidate's nomination paper. Any request by a registered voter to remove the voter's signature from a candidate's nomination paper that is received by the chief election officer, or clerk in the case of a county office, after the candidate's nomination paper has been filed or after 4:30 p.m. on the fourth business day prior to the close of filing shall not be accepted.

(d) Within twenty-four hours upon receipt of a written notice pursuant to subsection (c), the chief election officer, or clerk in the case of a county office, shall send written notice via registered mail to the candidate that the voter requested to have the voter's signature removed from the candidate's nomination paper and that the signature of the voter shall not be counted."

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$65,000 or so much thereof as may be necessary, for fiscal year 1996-1997 for the publication and dissemination of voting materials, including material relating to proposed constitutional amendments in the language of a language minority group as required by the Voting Rights Language Assistance Act of 1992.

The sum appropriated shall be expended by the office of the lieutenant governor for purposes of this Act.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect upon its approval; provided that Section 1 shall take effect on July 1, 1999; Section 2 shall be repealed on June 30, 1999; and Section 6 shall take effect on July 1, 1996.

(Approved June 17, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 174**

H.B. NO. 3154

A Bill for an Act Relating to Public Access.

*Be It Enacted by the Legislature of the State of Hawaii:*

**PART I. PURPOSE**

SECTION 1. The legislature reaffirms its commitment to the legislative public access program and to enhanced citizen participation in the legislative process, which it believes is fundamental to the maintenance of a healthy democracy.

Since 1990, a major component of the legislature's public access program has been the public access room in the state capitol, which provides staff to educate citizens in the legislative process and the use of computer technology for retrieving legislative information.

Another major component of the public access program has been the broadcasting of floor sessions, committee hearings, and briefings via cable television to all counties in the State.

An exciting new component of the public access program for the upcoming fiscal year is the legislative internet project, which will allow citizens internet access to the ACCESS legislative computer information service.

The purpose of this Act is to:

- (1) Provide continued legislative support and funding for the legislative public access program, which includes the public access room, legislative broadcast project, and the new legislative internet project;
- (2) Transfer the functional duties of the public access room to the legislative reference bureau; and
- (3) Establish a joint legislative access committee.

## PART II. PUBLIC ACCESS ROOM

SECTION 2. Section 21G-2, Hawaii Revised Statutes, is amended to read as follows:

**“[[§21G-2]] Public access room established.** (a) There is established in the state capitol a public access room in which members of the public shall be allowed to utilize various equipment, services, and facilities to enhance their ability to participate in the legislative process. [The costs of operation shall be borne equally by both houses of the legislature.]

(b) The public access room shall be maintained by the legislative reference bureau.”

SECTION 3. Section 23G-3, Hawaii Revised Statutes, is amended to read as follows:

**“§23G-3 General purposes of bureau.** The purpose of the office of the legislative reference bureau shall be[.] to:

- (1) [To provide] Provide a comprehensive research and reference service on legislative problems for the legislature;
- (2) [To conduct] Conduct impartial research, including legal research, as may be necessary for the enactment of substantive legislation, upon request by the legislature, legislative committees, or legislators, or on its own initiative;
- (3) [To disseminate] Disseminate its research findings to the legislature on all research projects undertaken upon the request of the legislature or legislative committees;
- (4) [To secure] Secure reports of various officers and boards of the State and as far as may be of the states and of the other territories of the United States and such other material, periodicals, or books as will furnish the fullest information practicable upon all matters pertaining to current or proposed legislative problems;
- (5) [To secure] Secure information for the legislature, legislative committees, and legislators by cooperating with the legislative reference services in the states and with the legislative service conference maintained by the council of state governments;
- (6) [To maintain] Maintain a reference library for use by the legislature and legislative service agencies. Subject to the priorities established by the director, reference materials may be made available to the various departments and agencies of the State and the general public;
- (7) [To draft] Draft or aid in drafting bills, resolutions, memorials, and amendments thereto, including committee reports, for the legislature, legislative committees, and legislators when requested;
- (8) [To control] Control and maintain the operations of any legislative data processing program as may be established;

- (9) [To serve,] Serve, upon request, in an advisory capacity to the legislature and its committees on all matters within its competencies and responsibilities;
- (10) [To assist,] Assist, upon request, legislative service agencies on matters within its competency; [and]
- (11) [To perform] Perform the function of statute revision and publication of session laws, supplements, and replacement volumes[.]; and
- (12) Maintain the public access room established by chapter 21G.”

SECTION 4. All rights, powers, functions, and duties of the public access room shall be transferred to the legislative reference bureau.

All employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act.

SECTION 5. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the public access room shall be transferred to the legislative reference bureau with the functions to which they relate.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$85,000 or so much thereof as may be necessary for fiscal year 1996-1997 to provide year-round funding for staff, equipment, and operations of the public access room.

The sum appropriated shall be expended by the legislative reference bureau to carry out the purposes of this part.

### PART III. BROADCASTS OF LEGISLATIVE PROCEEDINGS

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$150,000 or so much thereof as may be necessary for fiscal year 1996-1997 for the legislative broadcast project, including but not limited to the production and distribution of television broadcasts of legislative proceedings during 1996-1997.

The sum appropriated shall be expended by the legislature to carry out the purposes of this section.

The legislature may employ, without regard to chapters 76 and 77, Hawaii Revised Statutes, such persons as it deems necessary to conduct the legislative broadcast project.

SECTION 8. Act 5, Special Session Laws of Hawaii 1995, is amended by amending section 7 to read as follows:

“SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$20,000[,] or so much thereof as may be necessary for fiscal [year] years 1995-1996[,] and 1996-1997 for [plans and design to install] the installation of electronic hardware and equipment, which may include but not be limited to cameras, cables, control panels, and other equipment to provide greater public access to the legislature through television broadcasts of legislative proceedings.

The sum appropriated shall be expended by the legislature for the purposes of this part."

#### PART IV. INTERNET ACCESS

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$70,000 or so much thereof as may be necessary for fiscal year 1996-1997 to provide funding for equipment and operations of the legislative internet project, which shall allow for the public access to "ACCESS", the legislative computer information service on the internet.

The sum appropriated shall be expended by the legislature to carry out the purposes of this part.

#### PART V. JOINT LEGISLATIVE ACCESS COMMITTEE

SECTION 10. There is established the joint legislative access committee which shall be composed of members of the legislature. The president of the senate and the speaker of the house of representatives shall each appoint a co-chair and two members or more to the committee, one of whom shall be a member of the minority party.

The committee shall:

- (1) Oversee the staff and operations of the legislative broadcast project, and recommend policies for the project which shall be adopted by concurrent resolution; and
- (2) Review the operations of the public access room, legislative internet project, and other public access projects of the legislature and recommend policies for these projects to the president of the senate and the speaker of the house of representatives.

#### PART VI. AGENCY OR COMMISSION BROADCASTS OF STATE PROCEEDINGS

SECTION 11. The public utilities commission is requested to cablecast selected commission proceedings of interest to the public on cable television public access channels with timely notice provided to the public, and to coordinate with the cable television public access organizations to request use of cablecast equipment, technical assistance, programming air time, and possible crew contracts. The commission shall report to the legislature no later than twenty days prior to the convening of the 1997 regular session regarding its progress in this concern.

#### PART VII. SPECIAL FUND

SECTION 12. Chapter 21D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§21D- Hawaii legislative publications special fund; established.** (a) There is established a Hawaii legislative publications special fund within the treasury of the State into which shall be deposited:

- (1) All licensing fees or royalties derived from the publication of the Hawaii Revised Statutes in electronic format;
- (2) All appropriations made by the legislature to the fund; and
- (3) Any other proceeds derived from the publication and use of other legislative publications and information services in an electronic format.

All interest accrued by the revenues of the fund shall become part of the fund.

(b) Moneys in the Hawaii legislative publications special fund shall be used by the legislature to operate and improve the computer and public access systems of the legislature. Expenditures from the Hawaii legislative publications special fund shall be authorized and disbursed through joint agreement of the president of the senate and the speaker of the house of representatives.

(c) The Hawaii legislative publications special fund shall not be subject to section 36-27, 36-30, or 37-53."

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 14. This Act shall take effect on June 28, 1996.

(Approved June 17, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 175

H.B. NO. 3211

A Bill for an Act Relating to Impact Fees.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 46-142, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

**"[§46-142] Authority to impose impact fees[.]; enactment of ordinances required.** (a) The counties are authorized to assess, impose, levy, and collect impact fees for any development within their jurisdictions [and to enact]; provided that no impact fees may be assessed, imposed, or collected under this part unless the county enacts appropriate impact fee ordinances and [to adopt] adopts rules to effectuate the imposition and collection[.] of the fees."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect one year after the date of its approval.

(Approved June 17, 1996.)

ACT 176

H.B. NO. 3300

A Bill for an Act Relating to the Office of Hawaiian Affairs Budget.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act shall be known and may be cited as the Office of Hawaiian Affairs Supplemental Appropriations Act of 1996.



SECTION 2. This Act amends Act 19, Special Session Laws of Hawaii 1995, and other appropriations and authorizations effective during fiscal biennium 1995-1997.

SECTION 3. Act 19, Special Session Laws of Hawaii 1995, is amended by amending section 2 to read as follows:

“SECTION 2. Unless otherwise clear from the context, as used in this Act:

(a) “Program ID” means the unique identifier for the specific program, and consists of the abbreviation for the office of Hawaiian affairs followed by a designated number for the program.

(b) “Means of Financing,” or “MOF,” means the source from which funds are appropriated or authorized, as the case may be, to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. Such letter symbols, where used, shall have the following meanings:

### A General fund

[B Special funds]

### T Trust funds

(c) “Position ceiling” means the maximum number of permanent positions authorized for a particular program during a specified period or periods, as noted by an asterisk.”

SECTION 4. Act 19, Special Session Laws of Hawaii 1995, is amended by amending section 3 to read as follows:

“SECTION 3. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are appropriated or authorized, as the case may be, from the sources of funding specified to the office of Hawaiian affairs for the fiscal biennium beginning July 1, 1995, and ending June 30, 1997. The total general fund expenditures and the number of permanent positions established in each fiscal year of the biennium shall not exceed the sums and the position ceilings indicated for each year, except as provided elsewhere in this Act.

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
<b>Office of Hawaiian Affairs</b>							
1. OHA100 - POLICY AND ADMINISTRATION							
				11.00*	[	11.00*]	
						5.50*	
	OPERATING		OHA	567,272A	[	567,272A]	
			<u>OHA</u>			<u>280,257A</u>	
				11.00*	[	11.00*]	
						*	
			OHA	569,675B	[	569,675B]	
			<u>OHA</u>			B	
						16.50*	
			<u>OHA</u>			<u>876,153T</u>	
2. OHA101 - ADMINISTRATIVE SERVICES							
				5.00*	[	5.00*]	
						2.50*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		OPERATING	OHA OHA	510,672A	[	510,672A] 436,082A	*
				5.00*	[	5.00*]	*
			OHA OHA	515,119B	[	515,119B] B	*
			OHA			7.50*	*
						614,648T	
3.		OHA102 - PUBLIC INFORMATION		2.25*	[	2.25*]	*
		OPERATING	OHA OHA	225,150A	[	225,150A] 190,246A	*
				2.25*	[	2.25*]	*
			OHA OHA	227,001B	[	227,001B] B	*
			OHA			3.25*	*
						272,764T	
4.		OHA103 - HEALTH AND HUMAN SERVICES		1.25*	[	1.25*]	*
		OPERATING	OHA OHA	382,891A	[	382,891A] 361,770A	*
				1.25*	[	1.25*]	*
			OHA OHA	384,877B	[	384,877B] B	*
			OHA			1.75*	*
						408,185T	
5.		OHA104 - PLANNING AND RESEARCH		3.75*	[	3.75*]	*
		OPERATING	OHA OHA	263,760A	[	263,760A] 196,567A	*
				3.75*	[	3.75*]	*
			OHA OHA	279,460B	[	279,460B] B	*
			OHA			5.50*	*
						349,816T	
6.		OHA105 - CULTURE					
		OPERATING	OHA OHA	4,599A	[	4,599A] 4,540A	*
				3.00*	[	3.00*]	*
			OHA OHA	249,897B	[	249,897B] B	*
			OHA			3.00*	*
						249,897T	
7.		OHA106 - GOVERNMENT AFFAIRS		1.25*	[	1.25*]	*
		OPERATING	OHA OHA	61,832A	[	61,832A] 41,045A	*

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
				1.25*		[ 1.25*]	*
			OHA	87,029B		[ 87,029B]	B
			<u>OHA</u>			1.75*	*
			<u>OHA</u>			<u>113,016T</u>	T
8.	OHA107	LAND AND NATURAL RESOURCES		2.50*		[ 2.50*]	*
	OPERATING		OHA	582,138A		[ 582,138A]	A
			<u>OHA</u>			<u>529,744A</u>	A
				2.50*		[ 2.50*]	*
			OHA	584,044B		[ 584,044B]	B
			<u>OHA</u>			3.75*	*
			<u>OHA</u>			<u>640,968T</u>	T
9.	OHA108	ECONOMIC DEVELOPMENT		5.50*		[ 5.50*]	*
	OPERATING		OHA	493,675A		[ 493,675A]	A
			<u>OHA</u>			<u>392,260A</u>	A
				5.50*		[ 5.50*]	*
			OHA	507,451B		[ 507,451B]	B
			<u>OHA</u>			8.25*	*
			<u>OHA</u>			<u>618,300T</u>	T
10.	OHA109	EDUCATION		1.50*		[ 1.50*]	*
	OPERATING		OHA	345,815A		[ 345,815A]	A
			<u>OHA</u>			<u>305,329A</u>	A
				1.50*		[ 1.50*]	*
			OHA	439,430B		[ 439,430B]	B
			<u>OHA</u>			2.25*	*
			<u>OHA</u>			<u>473,250T</u>	T
11.	OHA110	HOUSING		1.75*		[ 1.75*]	*
	OPERATING		OHA	58,894A		[ 58,894A]	A
			<u>OHA</u>			<u>34,756A</u>	A
				1.75*		[ 1.75*]	*
			OHA	112,840B		[ 112,840B]	B
			<u>OHA</u>			2.50*	*
			<u>OHA</u>			<u>145,096T</u>	T

SECTION 5. Act 19, Special Session Laws of Hawaii 1995, is amended as follows:

- (1) By amending section 5 to read as follows:

“SECTION 5. Provided that of the funds appropriated for health and human services (OHA 103), the sum of \$298,000 in general funds and \$298,000 in special funds for fiscal year 1995-96 and the sum of \$298,000 in general funds and \$298,000 in [special] trust funds for fiscal year 1996-97 shall be used for services on a fee work contracted to Alu Like, Inc; and provided further that any general funds not used for this purpose shall lapse back into the general fund at the end of each respective fiscal year.”

(2) By amending section 6 to read as follows:

“SECTION 6. Provided that of the funds appropriated for health and human services (OHA 103), the sum of \$40,000 in general funds and \$40,000 in special funds for fiscal year 1995-96 and the sum of \$40,000 in general funds and \$40,000 in [special] trust funds for fiscal year 1996-97 shall be used for services on a fee work contracted to the Waianae diet program; and provided further that any general funds not used for this purpose shall lapse back into the general fund at the end of each respective fiscal year.”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

## ACT 177

H.B. NO. 3342

A Bill for an Act Relating to Revenue Maximization.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 29-24, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established in the state treasury[,] an interagency federal revenue maximization revolving fund into which shall be deposited all proceeds collected from the federal government and third-party payors for [prior periods] reimbursable costs not previously claimed by the State for reimbursement by federally-funded state programs. For purposes of this chapter, federally-funded state programs include but shall not be limited to those federally-funded programs within the departments of human services, education, and health. Expenditures and transfers from the fund shall be made by the comptroller in proportional allocations established by the comptroller and the director of finance. Transfers shall be made to the department claiming the reimbursement for expenses incurred related to federal fund reimbursement claims [or appropriated by the governor,] and to the general fund of the State. Moneys in the fund may be expended for consultant services rendered under subsection (b).”

SECTION 2. There is appropriated out of the general fund revenues of the State of Hawaii the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 1996-1997 to meet federal funding match requirements for state or federally mandated programs administered by the department of human services; provided that funds shall be released on the basis of one dollar of general revenues for every five dollars of revenues received for fiscal year 1996-1997 pursuant to Act

11, Special Session Laws of Hawaii 1995, for services attributable to the department of human services.

The sum appropriated shall be expended by the department of human services.

SECTION 3. There is appropriated out of the general fund revenues of the State of Hawaii the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 1996-1997 to meet federal funding match requirements for state or federal developmental disability programs administered by the department of health; provided that funds shall be released on the basis of one dollar of general revenues for every five dollars of revenues received for fiscal year 1996-1997 pursuant to Act 11, Special Session Laws of Hawaii 1995, for services attributable to the department of health.

The sum appropriated shall be expended by the department of health.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 1996.

(Approved June 17, 1996.)

## ACT 178

H.B. NO. 3350

A Bill for an Act Relating to the Payment of Child Support.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 576D-3, Hawaii Revised Statutes, is amended to read as follows:

**“§576D-3 Obtaining or enforcing child support.** (a) The agency shall undertake any legal or administrative action to secure support for a child by enforcing an existing court order or obtaining a court order of support.

(b) In order to carry out its responsibilities imposed under this chapter, the agency, through the offices of the corporation counsel, the county attorneys, or the attorney general, may commence or appear in any proceeding before any court or administrative agency for the purpose of establishing paternity for children born out of wedlock or for the purpose of obtaining, enforcing, or modifying an order of support on behalf of any dependent or any other person for whom the agency has a duty to obtain or enforce an order for<sup>1</sup> support under this chapter. The agency may commence or appear in any action on its own behalf, on behalf of any dependent child or custodial parent, or on behalf of any other person for whom the agency has a duty to obtain or enforce an order of support under this chapter. The agency shall obtain or enforce a child support order for the following children:

- (1) A child on whose behalf public assistance payments have been or are being made;
- (2) A child on whose behalf foster care payments have been or are being made under Title IV-E; or
- (3) A child on whose behalf a custodial parent, guardian, or other person having custody applies to the agency for assistance in obtaining or enforcing a child support order, regardless of whether [or not] public assistance payments have been made on the child's behalf; or

- (4) A child on whose behalf an order for child support requires child support payments to be paid through the child support enforcement agency. The signature of a judge or administrative hearings officer on the order for child support shall be considered an application for services].”

SECTION 2. Section 576D-10, Hawaii Revised Statutes, is amended to read as follows:

**“§576D-10 Collection and disbursal of child support[.]; direct payment exception.** (a) The agency shall collect and disburse child support payments when a court order requires the collection and disbursal. Notwithstanding any other law to the contrary, the agency shall maintain a special interest bearing account for child support payments. Moneys collected by the agency for child support payments shall not be deposited into the state treasury, but shall be deposited into this account. Moneys to be disbursed by the agency for child support payments shall be disbursed from this account without appropriation or allotment. The interest realized from this<sup>2</sup> account shall be used for related costs of the maintenance and operation of the account and the balance shall be deposited into the state treasury to the credit of the general fund.

(b) Any child support payments required by a court order effective on June 30, 1986, to be made to a court or clerk of the court and disbursed to a custodial parent shall be made to the agency after June 30, 1986. The agency shall disburse the payments as appropriate under the court order.

(c) At the time a child support obligation is first established or at any time thereafter, the court may approve an alternative arrangement for the direct payment of child support from the obligor to the custodial parent as an exception to the provisions for income withholding through the agency, as required by sections 571-52.2(a)(1), 571-52.3, and 576E-16(a).

(d) The court may approve an alternative arrangement for the direct payment of child support where either:

- (1) The obligor or custodial parent demonstrates and the court finds that there is good cause not to require immediate withholding; or
- (2) A written agreement is reached between the obligor and the custodial parent and signed by both parties;

provided that in either case where child support has been ordered previously, an alternative arrangement for direct payment shall be approved only where the obligor provides proof of the timely payment of previously ordered support. For purposes of this section, good cause to approve an alternative arrangement shall be based upon a determination by the court, either in writing or on the record, that implementing income withholding would not be in the best interests of the child. Such a determination shall include a statement setting forth the basis of the court’s conclusion.

(e) Any alternative arrangement for direct payment shall provide that either parent may void the arrangement at any time and apply for services from the agency to act as agent to receive payments from the obligor parent. The alternative arrangement for direct payment also shall provide that, if the subject dependents of the obligor parent commence receiving public assistance, including but not limited to public assistance from the department of human services under chapter 346, Hawaii Revised Statutes, foster care under section 571-48, Hawaii Revised Statutes, Title IV-E or Title XIX of the federal Social Security Act (42 U.S.C. §1396), the child support enforcement agency may immediately void the direct payment arrangement by sending written notice by regular mail to the custodial and obligor parents at their last known addresses, as disclosed in the alternative arrangement agreement.

(f) The alternative arrangement for direct payment agreement shall include the most recent addresses of the custodial and obligor parent. If the obligor parent alleges direct payment of child support to the custodial parent after the subject dependents of the court-approved alternative arrangement become recipients of public assistance, including but not limited to public assistance from the department of human services under chapter 346, Hawaii Revised Statutes, foster care under section 571-48, Hawaii Revised Statutes, Title IV-E or Title XIX of the federal Social Security Act (42 U.S.C. §1396), and after receiving proper notification of the change of payee to the child support enforcement agency, then the obligor shall have the burden of proving that the child support payments were made by presenting written evidence, including but not limited to cancelled checks or receipts.

(g) No alternative arrangement for direct payment shall be approved where the obligor or the custodial parent is receiving services under Title IV-D or where the dependents of the obligor receive public assistance, including but not limited to public assistance from the department of human services under chapter 346, foster care under section 571-48, Hawaii Revised Statutes, Title IV-E or Title XIX of the federal Social Security Act (42 U.S.C. §1396), or where the obligor owes a public assistance debt.

(h) Any alternative arrangement for direct payment shall pertain only to the method of payment of child support. The amount of child support shall be determined according to the child support guidelines pursuant to section 576D-7 and section 576E-15.

(i) The alternative arrangement for direct payment shall become effective upon approval and filing by the court.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

#### Notes

1. Prior to amendment “of” appeared here.
2. Prior to amendment “the” appeared here.

## ACT 179

H.B. NO. 3362

A Bill for an Act Relating to Districts.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 4-1, Hawaii Revised Statutes, is amended to read as follows:

**“§4-1 Districts, generally.** For election, taxation, education, city, county, and all other purposes, the State shall be divided into the following districts[:]; provided that the establishment of election districts shall be exclusively governed by article IV of the constitution of the State of Hawaii and chapter 25:

- (1) The island and county of Hawaii shall be divided into nine districts as follows:
  - (A) Puna, to be styled the Puna district;
  - (B) From the Hakalau stream to the boundary of South Hilo and Puna, to be styled the South Hilo district;

- (C) From the boundary of Hamakua and North Hilo to the Hakalau stream, to be styled the North Hilo district;
  - (D) Hamakua, to be styled the Hamakua district;
  - (E) North Kohala, to be styled the North Kohala district;
  - (F) South Kohala, to be styled the South Kohala district;
  - (G) North Kona, to be styled the North Kona district;
  - (H) South Kona, to be styled the South Kona district; and
  - (I) Kau, to be styled the Kau district.
- (2) The islands of Maui, Molokai, Lanai, and Kahoolawe and the counties of Maui and Kalawao shall be divided into seven districts as follows:
- (A) Kahikinui, Kaupo, Kipahulu, Hana, and Koolau, to be styled the Hana district;
  - (B) Hamakualoa, Hamakuapoko, portion of Kula, and Honuaula, the western boundary being a line starting from the sea at Kapukaulua on the boundary between the ahupuaas of Haliimaile and Wailuku, thence running inland following the boundary to the mauka side of the Lowrie ditch, thence following the mauka side of the ditch and its projected extension to the Waiakoa gulch which is the boundary between the ahupuaas of Pulehunui and Waiakoa, thence down along the boundary to the mauka boundary of the Waiakoa Homesteads (makai section), thence along the boundary to the ahupuaa of Kaonoulu, thence across the ahupuaa of Kaonoulu to the mauka boundary of the Waiohuli-Keokea Beach Homesteads, thence along the boundary to the mauka boundary of the Kamaole Homesteads, thence along the boundary and the extension thereof to the north boundary of the ahupuaa of Paeahu, thence along the boundary to the sea, and including the island of Kahoolawe, to be styled the Makawao district;
  - (C) All that portion of central Maui lying east of a line along the boundary of the ahupuaas of Kahakulua and Honokohau to the peak of Eke crater, thence along the ridge of mountains and down the bottom of Manawainui gulch to the sea, and west of the boundary of Makawao district, to be styled Wailuku district;
  - (D) All that portion of Maui lying west of Wailuku district, to be styled the Lahaina district;
  - (E) The island of Molokai, except that portion of the island known as Kalaupapa, Kalawao, and Waikolu and commonly known or designated as the Settlement for Hansen's disease sufferers, to be styled the Molokai district;
  - (F) All that portion of the island of Molokai known as Kalaupapa, Kalawao, and Waikolu forming the county of Kalawao, to be styled the Kalawao district; and
  - (G) The island of Lanai, to be styled the Lanai district.
- (3) [The] For judicial purposes, the island of Oahu shall be divided into seven districts as follows:
- (A) From Makapuu Head in Maunalua to Moanalua inclusive, and the islands not included in any other district, to be styled the Honolulu district;
  - (B) Ewa, excluding Waikakalaua, Waipio Acres, and Mililani Town, to be styled the Ewa district;
  - (C) Waianae excluding Waianae Uka, to be styled the Waianae district;



- (D) From Kaena point to and including Waialea Stream excluding Wahiawa, hereinafter described, to be styled the Waialua district;
  - (E) From Waialea Stream to Lae o ka Oio, to be styled the Koolauloa district;
  - (F) From Lae o ka Oio to Makapuu Head in Waimanalo, to be styled the Koolaupoko district;
  - (G) Wahiawa and Waianae Uka, including Waikakalaua, Waipio Acres, and Mililani Town, lying between Ewa and Waialua districts and more particularly described in the following manner: Beginning at Puu Kaaumakua in the Koolau range and running to and along the south boundary of Waianae Uka (which is also the south boundary of Schofield Barracks Military Reservation) [to and including Waikakalaua, Waipio Acres, and Mililani Town, thence] to Puu Hapapa in the Waianae range; thence continuing along Schofield Barracks Military Reservation northerly along the Waianae range to Puu Kaala, easterly along Mokuleia down ridge to Puu Pane, continuing to Maili Trig. station, and down ridge to Haleauau stream and down Haleauau stream to Kaukonahua gulch, and easterly along the gulch to the west boundary of the ahupuaa of Wahiawa; thence leaving Schofield Barracks Military Reservation and following up and along the west and north boundaries of the ahupuaa of Wahiawa to the Koolau range; thence along the Koolau range to the beginning; to be styled the Wahiawa district.
- (4) For all purposes except for judicial, the island of Oahu shall be divided into seven districts as follows:
- (A) From Makapuu Head in Maunalua to Moanalua inclusive, and the islands not included in any other district, to be styled the Honolulu district;
  - (B) Ewa, to be styled the Ewa district;
  - (C) Waianae excluding Waianae Uka, to be styled the Waianae district;
  - (D) From Kaena point to and including the ahupuaa of Waimea excluding Wahiawa, hereinafter described, to be styled the Waialua district;
  - (E) From Waimea to Lae o ka Oio, to be styled the Koolauloa district;
  - (F) From Lae o ka Oio to Makapuu Head in Waimanalo, to be styled the Koolaupoko district;
  - (G) Wahiawa and Waianae Uka, lying between Ewa and Waialua districts and more particularly described in the following manner: Beginning at Puu Kaaumakua in the Koolau range and running to and along the south boundary of Waianae Uka (which is also the south boundary of Schofield Barracks Military Reservation) to Puu Hapapa in the Waianae range; thence continuing along Schofield Barracks Military Reservation northerly along the Waianae range to Puu Kaala, easterly along Mokuleia down ridge to Puu Pane, continuing to Maili Trig. station, and down ridge to Haleauau stream and down Haleauau stream to Kaukonahua gulch, and easterly along the gulch to the west boundary of the ahupuaa of Wahiawa; thence leaving Schofield Barracks Military Reservation and following up and along the west and north boundaries of the ahupuaa of Wahiawa to the Koolau range;

thence along the Koolau range to the beginning; to be styled the Wahiawa district.

- [(4)] (5) The islands of Kauai, Niihau, Kaula, and county of Kauai, shall be divided into five districts as follows:
- (A) From Puanaaiea [Point] point to the ili of Eleele, including the islands of Niihau and Kaula, to be styled the Waimea district;
  - (B) From and including the ili of Eleele to and including Mahaulepu, to be styled the Koloa district;
  - (C) From and including Kipu to the northerly bank of the north fork and the main Wailua river, to be styled the Lihue district;
  - (D) From the northerly bank of the north fork and the main Wailua river to Kealaakaiole, to be styled the Kawaihau district; and
  - (E) From and including Kealaakaiole to Puanaaiea [Point] point to be styled the Hanalei district."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

## ACT 180

H.B. NO. 3370

A Bill for an Act Relating to State Treasury Cashiering.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 40-68, Hawaii Revised Statutes, is amended to read as follows:

**"§40-68 Nonpresentment of warrants and checks.** Any warrant [or check] drawn upon the state treasury shall be presented at the treasury for payment before the close of the fiscal year next after the fiscal period in which it has been issued. Any check drawn from depositories of state treasury moneys shall be presented at such depositories for payment before the close of the fiscal year next after the fiscal period in which it has been issued. The director of finance shall pay out moneys for the payment, redemption, or purchase of state bonds and for the payment of interest thereon pursuant to chapter 39. All warrants or checks not so presented within that time shall be deemed to have been paid, and any money held at the expiration of that time in a special fund or account for the payment of the warrants or checks shall thereupon be transferred to a trust fund established and known as the nonpresentment of warrants and checks trust fund; provided that the fund balance in the trust fund shall not exceed \$500,000 and any excess of that amount shall be transferred to the general fund; provided further that within the period of ten fiscal years immediately following the year in which an amount of money was so transferred to the trust fund, the payee or assignee of the warrant or check, or, if the payee is deceased, the personal representative of the estate of the payee, or if the estate of the payee is closed, to any person lawfully entitled to the undisposed property of the deceased payee, upon filing with the comptroller a claim for recovery and any supportive evidence required by the comptroller, shall be paid the amount of the warrant or check out of the trust fund upon a warrant or check newly drawn by the comptroller."

SECTION 2. Act 221, Session Laws of Hawaii 1994, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect on July 1, 1994; provided that section 1 shall take effect on June 30, 1994; and provided further that on July 1, 1996, section 1 of this Act shall be repealed and section 40-68, Hawaii Revised Statutes, shall be reenacted in the form in which it read prior to this Act].”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on June 30, 1996.

(Approved June 17, 1996.)

## ACT 181

H.B. NO. 3399

A Bill for an Act Relating to Business Registration.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 415-128, Hawaii Revised Statutes, is amended to read as follows:

“**§415-128 Fees for filing documents and issuing certificates.** The following fees shall be paid to the director upon the filing of corporate documents:

- (1) Articles of incorporation, [~~\$50;~~] \$100;
- (2) Articles of amendment, [~~\$25;~~] \$50;
- (3) Restated articles of incorporation, [~~\$25;~~] \$50;
- (4) Articles of merger or consolidation, [~~\$100;~~] \$200;
- (5) Articles of merger (subsidiary corporation), [~~\$50;~~] \$100;
- (6) Articles of dissolution, [~~\$25;~~] \$50;
- (7) Annual report of domestic and foreign corporations organized for profit, [~~\$15;~~] \$25;
- (8) [~~Filing any~~] Any other statement [or], report, certificate, application, or other corporate document, except an annual report, of a domestic or foreign corporation, [~~\$25;~~] \$50;
- (9) Application for a certificate of authority, [~~\$50;~~] \$100;
- (10) Application for a certificate of withdrawal, [~~\$25;~~] \$50;
- (11) Reservation of corporate name, [~~\$10;~~] \$20;
- (12) Transfer of reservation of corporate name, [~~\$10;~~] \$20;
- (13) Good standing certificate, [~~\$15;~~] \$25;
- (14) Special handling fee for review of corporation documents, excluding articles of merger or consolidation, [~~\$40;~~] \$50;
- (15) Special handling fee for review of articles of merger or consolidation, [~~\$100;~~] \$150;
- (16) Special handling fee for certificates issued by the department, [~~\$10~~] \$20 per certificate; and
- (17) Special handling fee for certification of documents, \$1 per page.

All special handling fees shall be credited to the special fund established for use by the department in expediting the processing of documents. At least two temporary business registration assistant I positions shall be paid out of the special fund.

The director shall adjust the fees assessed under this section, as necessary from time to time, through rules adopted under chapter 91 to ensure that the proceeds, together with all other receipts of the special fund under this section do not

surpass the annual operating costs of the program. All unexpended and unencumbered moneys remaining on balance with the fund at the close of each fiscal year which are deemed, by the director of finance, to be in excess of the moneys necessary to carry out the processing of corporate documents over the next following fiscal year shall lapse to the credit of the state general fund.”

SECTION 2. Section 415B-155, Hawaii Revised Statutes, is amended to read as follows:

“**\$415B-155 Fees for filing documents and issuing certificates.** The following fees shall be paid to the director upon the filing of corporate documents:

- (1) Articles of incorporation, [\$25;] \$50;
- (2) Articles of amendment, [\$10;] \$20;
- (3) Restated articles of incorporation, [\$10;] \$20;
- (4) Articles of merger or consolidation, [\$50;] \$100;
- (5) Articles of dissolution, [\$10;] \$20;
- (6) Annual report of nonprofit domestic and foreign corporations, [\$1;] \$5;
- (7) ~~[Filing any] Any other statement [or], report, certificate, application, or other corporate document,~~ except an annual report, of a nonprofit domestic or foreign corporation, [\$10;] \$20;
- (8) Application for a certificate of authority, [\$25;] \$50;
- (9) Application for a certificate of withdrawal, [\$10;] \$20;
- (10) Reservation of corporate name, [\$10;] \$20;
- (11) Transfer of reservation of corporate name, [\$10;] \$20;
- (12) Good standing certificate, [\$15;] \$20;
- (13) Special handling fee for review of corporation documents, excluding articles of merger or consolidation, [\$40;] \$50;
- (14) Special handling fee for review of articles of merger or consolidation, [\$100;] \$150;
- (15) Special handling fee for certificates issued by the department, [\$10] \$20 per certificate; and
- (16) Special handling fee for certification of documents, \$1 per page.

All special handling fees shall be credited to a special fund which may be established for use by the department in expediting the processing of documents. At least two temporary business registration assistant I positions shall be paid out of the special fund.”

SECTION 3. Section 425-12, Hawaii Revised Statutes, is amended to read as follows:

“**\$425-12 Fee for [recording.] filing documents and issuing certificates.**

[(a) The director of commerce and consumer affairs shall collect the following fees:

- (1) For each change of partnership name or statement of dissolution filed, a fee of \$1.50 per partner;
- (2) For each annual statement filed, a fee of \$3; and
- (3) For each general partnership registered, a fee of \$3 for each partner.

(b) The following special handling fees shall be assessed by the director for expeditious review of the following documents:

- (1) For general partnerships: registration statement, \$10; change of name statement, \$10; partnership dissolution statement, \$10; annual statement, \$10; certification of general partnership, \$1 a page; certificate of good standing, \$10;
- (2) For foreign general partnerships: registration statement of foreign general partnership, \$10; withdrawal application, \$10; annual statement,

\$10; certification of foreign general partnership, \$1 a page; certificate of good standing, \$10.]

The following fees shall be paid to the director upon the filing of general partnership documents:

- (1) Partnership registration statement, \$25;
- (2) Partnership change of name statement, \$25;
- (3) Partnership dissolution statement, \$25;
- (4) Foreign general partnership registration statement, \$25;
- (5) Statement of change, \$25;
- (6) Application for certificate of withdrawal, \$10;
- (7) Statement of correction, \$25;
- (8) Reservation of name, \$20;
- (9) Transfer of reservation of name, \$20;
- (10) Annual statement for domestic or foreign general partnership, \$10;
- (11) Good standing certificate, \$25;
- (12) Any other statement, certificate, or other document for a domestic or foreign general partnership, \$25;
- (13) Special handling fee for review of any general partnership document, \$20;
- (14) Special handling fee for certificates issued by the director, \$20 per certificate; and
- (15) Special handling fee for certification of documents, \$1 per page.

All special handling fees shall be credited to the special fund authorized by section 415-128.”

SECTION 4. Section 425-17, Hawaii Revised Statutes, is amended to read as follows:

**“§425-17 Withdrawal procedure for foreign general partnership.** Any foreign general partnership which has qualified to transact business in this State may withdraw and surrender its right to engage in business within this State by securing from the director of commerce and consumer affairs a certificate of withdrawal. Any such general partnership shall file in the office of the director an application for withdrawal, certified and signed by a general partner, which shall set forth:

- (1) The name of the foreign general partnership, and the state or country under the laws of which it is formed;
- (2) That the foreign general partnership is not transacting business in this State;
- (3) That the foreign general partnership surrenders its authority to transact business in this State;
- (4) That the foreign general partnership revokes the authority of its registered agent in this State to accept service of process, and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the partnership was authorized to transact business in this State may thereafter be made on the partnership by service thereof on the director;
- (5) The name and residence address of each general partner;
- (6) The dates that notice of the foreign general partnership’s intent to withdraw from the State was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State. The foreign general partnership, with the approval of the director may omit the publication of the notice if the partnership has insufficient assets to pay for the publication;

- (7) That all taxes, debts, obligations, and liabilities of the foreign general partnership in the State have been paid and discharged or that adequate provision has been made therefor;
- (8) A mailing address to which the director may mail a copy of any process against the foreign general partnership that may be served on the director; and
- (9) Such additional information as may be necessary or appropriate to enable the director to determine and assess any unpaid fees payable by the foreign general partnership.

Upon the filing [with and the approval by the director] of the [aforesaid] application[,] for withdrawal, and after the payment of a fee of [\$3,] \$10, the director shall issue [to such general partnership] a certificate [stating that it has withdrawn and surrendered its rights to engage in business within this State.] of withdrawal, which shall be effective as of the date of the filing of the application for withdrawal, and the authority of the foreign general partnership to transact business in this State shall then cease. No such general partnership may withdraw from this State without complying with the aforesaid conditions and until such compliance, service of legal notices, and processes may be made on any agent of the general partnership within the State, or if none can be found, service of such notices and processes upon the director of commerce and consumer affairs shall be deemed sufficient service of such notices and processes upon it.”

SECTION 5. Section 425D-1107, Hawaii Revised Statutes, is amended to read as follows:

**“§425D-1107 Fees for filing documents and issuing certificates.** The following fees shall be paid to the director upon the filing of limited partnership documents:

- (1) Certificate of limited partnership, [\$25;] \$50;
- (2) Any certificate of amendment, restatement, or correction, [\$10;] \$20;
- (3) Certificate of cancellation, [\$10;] \$20;
- (4) Annual statement for domestic or foreign limited partnership, [\$3;] \$10;
- (5) Any other certificate or document of domestic or foreign limited partnership, [\$10;] \$20;
- (6) Application for registration as a foreign limited partnership, [\$50;] \$100;
- (7) Any certificate of amendment or agent change for foreign limited partnership, [\$10;] \$20;
- (8) Application for certificate of withdrawal of foreign limited partnership, [\$10;] \$20;
- (9) Reservation of name, [\$10;] \$20;
- (10) Transfer of reservation of name, [\$10;] \$20;
- (11) Good standing certificate, [\$15;] \$20;
- (12) Special handling fee for review of any limited partnership document, [\$40;] \$50;
- (13) Special handling fee for certificates issued by the director, [\$10] \$20 per certificate; and
- (14) Special handling fee for certification of documents, \$1 per page.

All special handling fees shall be credited to the special fund authorized by section 415-128.”

SECTION 6. Section 482-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Before any person may receive a certificate of registration of a print, label, or trademark, the person shall file in the office of the director of commerce and consumer affairs an application for the registration of the print, label, or trademark, with a declaration, certified by the applicant, stating that the applicant is the sole and original proprietor or the assign of the proprietor of this print, label, or trademark, and describing the goods or manufactured articles for which the print, label, or trademark is used, and stating the manner in which the print, label, or trademark is used. Before any person may receive a certificate of registration of a service mark or trade name, the person shall file in the office of the director an application for the registration thereof, with a declaration, certified, as aforesaid, stating that the person is the sole and original proprietor of the service mark or trade name, or the assign of the proprietor and setting forth the nature of the business in which the service mark or trade name is used. The application shall be accompanied by two exact copies of the print, label, trademark, service mark, or trade name. Upon filing the application, the applicant shall pay to the director a fee of [\$25, of which \$15 shall be deposited in the special fund authorized by section 415-128, and the balance deposited to the general fund of the State.] \$50. A special handling fee of [\$10] \$20 for expediting registration of a trade name, print, label, trademark, or service mark shall be assessed by the department. All special handling fees shall be credited to the special fund authorized by section 415-128.”

SECTION 7. Section 482-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The registration of a print, label, trademark, service mark, or trade name may be renewed at any time during a period of its registration for additional periods of ten years from the date of renewal by the filing of an application for renewal of registration in a form as the director may provide. Upon filing the application for renewal, the applicant shall pay the director a fee of [\$25, of which \$15 shall be deposited in the special fund authorized by section 415-128, and the balance deposited to the general fund of the State.] \$50.”

SECTION 8. Section 482E-3, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) [In lieu of an offering circular meeting the requirements set forth in this section, franchises may be sold in this State by means of an offering circular or disclosure statement required by a federal or government agency of another state, or an offering circular or disclosure statement meeting the requirements approved by an association of state regulatory agencies; provided that the director determines that the<sup>1</sup> offering circular or disclosure statement substantially meets the disclosure requirements set forth in this section.] Every filing under this section shall expire two months after the end of each franchisor’s fiscal year. Applications for renewals shall be made not more than sixty days before the expiration date. An application for renewal shall be accompanied by the most recently amended offering circular required under subsection (b). Any applicant for renewal of a franchise filing who submits the renewal application after the expiration date shall be required to reapply as a new franchisor.”

SECTION 9. Section 482E-11, Hawaii Revised Statutes, is amended to read as follows:

“**\$482E-11 Fees.** The director shall charge and collect a fee of [\$50] \$250 at the time of the filing of the offering circular [or the], a fee of \$250 for the filing of

any amended offering circular filed pursuant to section 482E-3(c)[.], and an annual renewal fee of \$250 to be collected pursuant to section 482E-3(d)."

SECTION 10. Section 485-4, Hawaii Revised Statutes, is amended to read as follows:

**"§485-4 Exempt securities.** The following securities are exempt from sections 485-8 and 485-25(a)(7):

- (1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state or territory, any political subdivision of a state or territory, or any agency or corporate or other instrumentality of one or more of the foregoing, or any certificate of deposit for any of the foregoing;
- (2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;
- (3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state or territory or any investment certificate issued by a financial services loan company duly licensed under the financial services loan law of the State of Hawaii;
- (4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association or any building and loan or similar association organized under the laws of any state or territory and authorized to do business in the State;
- (5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state or territory and authorized to do business in the State;
- (6) Any security issued or guaranteed by any federal credit union, or any credit union or similar association organized and supervised under the laws of the State;
- (7) Any security issued or guaranteed by any common carrier, public utility, or holding company which is (A) subject to the jurisdiction of the Interstate Commerce Commission; (B) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that Act; (C) regulated in respect of its rates and charges by a governmental authority of the United States or any state or territory; or (D) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States or any state or territory;
- (8) Any security listed or approved for listing upon notice of issuance on any exchange registered or exempted under the Securities Exchange Act of 1934, as amended; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe for any of the foregoing;
- (9) Any security issued by any issuer organized and operated not for private profit but exclusively for religious, educational, benevolent,



- charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association;
- (10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;
  - (11) Any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan;
  - (12) Any option on a commodity futures contract subject to regulation under the Commodity Exchange Act;
  - (13) Any security issued by an "investment company" as defined by and registered under the "Investment Company Act of 1940" (15 U.S.C. [§]80a); provided that:

(A) The issuer is:

- (i) Advised by an investment adviser that is a depository institution, subsidiary, or affiliate thereof, any of which are exempt from registration under the Investment Advisers Act of 1940 (15 U.S.C. 80a-1), or is currently registered as an investment adviser, and has been registered, or is affiliated with an adviser that has been registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. §80b-3) for at least three years immediately preceding an offer or sale of a security claimed to be exempt under this paragraph and the investment adviser has acted, or is affiliated with an investment adviser that has acted, as an investment adviser to one or more registered investment companies or unit investment trusts for at least three years immediately preceding an offer or sale of a security claimed to be exempt under this paragraph; or
- (ii) The issuer has a sponsor that has at all times throughout the three years prior to an offer or sale of a security claimed to be exempt under this paragraph, sponsored one or more registered investment companies or unit investment trusts whose aggregate total assets have exceeded \$100,000,000; and

(B) The commissioner has received prior to any sale exempted under this paragraph:

- (i) A notice of intention to sell setting forth the name and address of the issuer and the securities to be offered in this State; and
- (ii) An initial filing fee of \$200 per fund for open-end management companies or a fee of \$200 for unit investment trusts, and an annual renewal fee of \$50 thereafter, to be collected within two months of the end of the investment or trust company's fiscal year.

An exemption under this paragraph does not constitute an exemption from the licensing requirements for salespersons under section 485-14. If any offer or sale is to be made more than twelve months after the date notice under subparagraph (B)(i) is received by the commissioner, another notice and payment of the applicable fee shall be required.

For purposes of this paragraph, an investment adviser is affiliated with another investment adviser if the investment adviser controls, is controlled by, or is under common control with the other investment adviser;

- (14) Any cooperative association membership stock, membership certificates or share, or membership capital, pursuant to section 421C-36, or [chapters] chapter 421 [or 422];
- (15) Any security, except a security issued by an issuer registered as an open-end management company or unit investment trust under the Investment Company Act of 1940 (15 U.S.C. 80a), for which a registration statement has been filed under the Securities Act of 1933, provided that no sale shall be made until such registration statement has become effective; and
- (16) Any variable annuity contract which is an investment contract prepared by a life insurance company designed to offer continuous income through participation in a mutual fund portfolio or a variable annuity contract based upon a separate account which is registered as a management investment company with the Securities and Exchange Commission.”

SECTION 11. Section 485-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Procedure for registration by notification. Securities entitled to registration by notification shall be registered by the filing by the issuer or by any registered dealer interested in the sale thereof, in the office of the commissioner, of a statement with respect to the securities containing the following:

- (1) Name of issuer, location and, if incorporated, place of incorporation;
- (2) A brief description of the securities, including the amount of the issue;
- (3) Amount of securities to be offered in the State;
- (4) A statement of the amount of the issuer’s income, expenses, and fixed charges during the last three years, certified to by a public accountant;
- (5) A balance sheet showing the amount and general character of its assets and liabilities as of the last fiscal year immediately preceding, certified to by a public accountant;
- (6) A brief statement of the facts which show that the securities fall within one of the classes in this section defined;
- (7) The price at which the securities are to be offered for sale to the public;
- (8) A statement that the issuer has complied with all the laws of the United States relating to the sale of securities; and
- (9) Such further information as the commissioner may require.

All of the statements, exhibits, and documents of every kind required by the commissioner under this section, except properly certified public documents, shall be verified by the oath of the applicant or of the issuer in such manner and form as may be required by the commissioner.

In the case of securities falling within the class defined by subsection (a)(1) or (2), a copy of the circular to be used for the public offering shall be filed in the office of the commissioner with the statement or within two days thereafter or within such further time as the commissioner allows.

In the case of securities falling within the classes defined by subsection (a)(3), (4), (5), (6), and (7), the circular to be used for the public offering shall be filed with the statement.

The filing of such statement in the office of the commissioner and the payment of the fee hereinafter provided shall constitute the registration of the

security. Upon such registration, the securities may be sold in the State by any registered dealer giving notice in the manner provided in section 485-14(o) subject to the further order of the commissioner as hereinafter provided.

At the time of filing the statement, as prescribed in this section, the applicant shall pay to the commissioner a fee of one-twentieth of one per cent of the aggregate offering price of the securities to be offered in the State for which the applicant is seeking registration, but in no case shall the fee be more than [\$250.] \$500.”

SECTION 12. Section 485-10, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) At the time of filing the application for registration as prescribed in this section, the applicant shall pay to the commissioner, a fee of one-tenth of one per cent of the aggregate offering price of the securities to be sold in the State for which the applicant is seeking registration, but in no case shall the fee be less than [\$50] \$250 nor more than [\$500.] \$2,500.”

SECTION 13. Section 485-10, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Registration under this section is effective for a period of one year and may be renewed for additional periods of one year by filing, by a date not later than fifteen days prior to expiration of registration, a prospectus meeting the requirements of subsection (b)(3) or (4), and containing information as of a date not more than ninety days prior to the date of filing, together with the payment of a renewal fee of [\$50.] \$250.”

SECTION 14. Section 485-14, Hawaii Revised Statutes, is amended by amending subsection (l) to read as follows:

“(l) Recording; duration; renewal; fee. The name and addresses of all persons found eligible for registration as dealers, investment advisers, salespersons, or investment adviser representatives and all orders with respect thereto shall be recorded in a register of dealers, investment advisers, salespersons, and investment adviser representatives kept in the office of the commissioner which shall be open to public inspection. Except as hereinafter provided, every registration for investment advisers and investment adviser representatives under this section shall expire on December 31 in each odd-numbered year, and every registration for dealers and salespersons under this section shall expire on December 31 of each year. Applications for renewals shall be made not less than thirty nor more than sixty days before the end of the expiration year or as provided through the Central Registration Depository system. Any applicant for renewal of a dealer, investment adviser, salesperson, or investment adviser representative registration who does not submit the application within the time prescribed by this section shall pay a penalty of one hundred per cent of the applicable renewal fee. Any applicant for renewal of a dealer or investment adviser registration who submits the application after December 31 of the expiration year shall be required to reapply as a new dealer or investment adviser. The registration of any dealer, investment adviser, salesperson, or investment adviser representative may be revoked or terminated prior to its expiration by written notice filed with the commissioner by the registered dealer, registered salesperson, registered investment adviser, or registered investment adviser representative concerned, and the revocation shall take effect as of the date and time of filing of the notice. Upon revocation or termination of the registration of any dealer, investment adviser, salesperson, or investment adviser representative, the dealer’s,

investment adviser's, salesperson's, or investment adviser representative's certificate of registration shall be surrendered to the commissioner for cancellation. The fee for registration and for each renewal shall be [\$100] \$200 in the case of dealers and investment advisers and [\$25] \$50 in the case of salespersons and investment adviser representatives."

SECTION 15. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 16. This Act shall take effect on July 1, 1996.

(Approved June 17, 1996.)

**Note**

1. Prior to amendment "such" appeared here.

**ACT 182**

H.B. NO. 3400

A Bill for an Act Relating to Business Registration.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 415, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§415- Amended and restated articles of incorporation.** (a) A domestic corporation may at any time amend and restate its articles of incorporation by complying with the procedures and requirements of sections 415-59, 415-60, and 415-64.

(b) Upon its adoption, the amended and restated articles of incorporation shall set forth:

- (1) All of the operative provisions of the articles of incorporation as theretofore amended;
- (2) The information required by section 415-61; and
- (3) A statement that the amended and restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

(c) The amended and restated articles of incorporation shall be delivered to the director for filing. The director may certify the amended and restated articles of incorporation as the articles of incorporation currently in effect, without including the information required to be filed by subsection (b)(2) and (3)."

SECTION 2. Section 415-48.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A corporation shall have the power to eliminate or limit the personal liability of its directors in any action brought by the shareholders or the corporation for monetary damages against any director of the corporation for a breach of fiduciary duty as a director, provided that:

- (1) The elimination or limitation shall be authorized, directed, or provided for[, and approved by the shareholders of the corporation,] in:
  - (A) The articles of incorporation of the corporation; or
  - (B) Any duly adopted amendment of the articles of incorporation; [or
  - (C) Any bylaw of the corporation, or amendment to the bylaws;] and

- (2) [The] If the provision eliminating or limiting the personal liability of a corporation's directors is authorized, directed, or provided for by amendments to the articles of incorporation, it shall be adopted upon the affirmative vote of the holders of two-thirds of the shares represented at the shareholders' meeting and having voting power; provided that the vote also constitutes a majority of the shares having voting power."

SECTION 3. Section 415-48.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The shareholders of the corporation shall receive written notice of any proposal by the corporation to eliminate or limit the personal liability of the directors under subsection [(a),] (a)(2), and the corporation shall in such cases submit the [written notice and the written proposal, if any,] duly adopted amendment to the articles of incorporation to the director of [the department of] commerce and consumer affairs. [The department may adopt guidelines as to the form of the written notice which is to be sent to the shareholders notifying them of the proposal to eliminate or limit the personal liability of the directors.]"

SECTION 4. Section 415-64, Hawaii Revised Statutes, is amended to read as follows:

**"§415-64 Restated articles of incorporation.** (a) A domestic corporation may at any time restate its articles of incorporation as theretofore amended, by a resolution adopted by the board of directors.

(b) Upon [the adoption of the resolution,] its adoption, restated articles of incorporation shall set forth all of the operative provisions of the articles of incorporation as theretofore amended, together with a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended, and that the restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

(c) The restated articles of incorporation shall be delivered to the director for filing. The director may certify the restated articles of incorporation currently in effect, without including the information required to be filed by subsection (b)."

SECTION 5. Section 415-83, Hawaii Revised Statutes, is amended to read as follows:

**"§415-83 Voluntary dissolution by consent of shareholders.** A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

Upon the execution of the written consent, a statement of intent to dissolve shall set forth:

- (1) The name of the corporation;
- (2) The names and respective residence addresses of its officers;
- (3) The names and respective residence addresses of its directors; and
- [(4) A copy of the written consent signed by all shareholders of the corporation; and
- (5)] (4) A statement that the written consent has been signed by all shareholders of the corporation, or signed in their names by their attorneys thereunto duly authorized."

SECTION 6. Section 415-84, Hawaii Revised Statutes, is amended to read as follows:

**“§415-84 Voluntary dissolution by act of corporation.** A corporation may be dissolved by the act of the corporation, when authorized, in the following manner:

- (1) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of the dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;
- (2) Written notice shall be given to each shareholder record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, that one of the purposes of the meeting is to consider the advisability of dissolving the corporation;
- (3) With respect to corporations incorporated on or after July 1, 1987, at such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. The resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon;
- (4) With respect to corporations incorporated before July 1, 1987, at such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. The resolution shall be adopted upon receiving the affirmative vote of the holders of three-fourths of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of three-fourths of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control, provided that said lesser proportion shall not be less than the proportion set forth in paragraph (3) of this section; and
- (5) Upon the adoption of the resolution, a statement of intent to dissolve shall set forth:
  - (A) The name of the corporation;
  - (B) The names and respective residence addresses of its officers;
  - (C) The names and respective residence addresses of its directors;
  - (D) [A copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation;] The date, time, and location of the shareholders meeting;
  - (E) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each class; and
  - (F) The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively.”

SECTION 7. Section 415-110, Hawaii Revised Statutes, is amended to read as follows:

**“§415-110 Application for certificate of authority.** To procure a certificate of authority to transact business in this State, a foreign corporation should make application therefor to the director, which application shall set forth:

- (1) The name of the corporation and the jurisdiction in which it is incorporated;
- (2) The date of incorporation and the period of duration of the corporation;
- (3) The mailing address of the principal office of the corporation in the jurisdiction in which it is incorporated;
- (4) The street address of the proposed registered office of the corporation in this State, and the name of its proposed registered agent in this State at that address;
- (5) The primary specific purpose and such other purposes of the corporation which it proposes to pursue in the transaction of business in this State;
- (6) The names and respective addresses of the directors and officers of the corporation; and
- [(7)] (7) An estimate, expressed in dollars, of the value of all property to be owned by the corporation for the following year, wherever located, and an estimate of the value of the property of the corporation to be located within this State during such year, and an estimate, expressed in dollars, of the gross amount of business which will be transacted by the corporation during that year, and an estimate of the gross amount thereof which will be transacted by the corporation at or from places of business in this State during such year; and
- (8)] (7) Any additional information as may be necessary or appropriate to enable the director to determine whether the corporation is entitled to a certificate of authority to transact business in this State. The application shall be made on forms prescribed and furnished by the director which shall be delivered to the director for filing.”

SECTION 8. Section 415B-91, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Upon the adoption of a resolution, a statement of intent to dissolve the corporation shall be delivered to the director for filing and shall set forth:

- (1) The name of the corporation;
- (2) The names and respective residence addresses of the corporation’s officers and directors;
- (3) [A copy of the resolution adopted authorizing the dissolution;] The manner in which the resolution approving the dissolution was adopted; and
- (4) The number of votes by members or directors, as the case may be, cast in favor of the resolution.”

SECTION 9. Section 425-1.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A document is corrected:

- (1) By preparing a statement of correction that:
  - (A) Describes the document including its file date or attaches a copy of it to the statement;

- (B) Specifies the incorrect information and the reason it is incorrect or the manner in which the execution was defective; [and]
  - (C) Corrects the incorrect information or defective execution; and
  - (D) Is executed and certified by a general partner;  
and
- (2) By delivering the statement to the director for filing.”

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 11. This Act shall take effect on July 1, 1996.

(Approved June 17, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 183

H.B. NO. 3419

A Bill for an Act Relating to Licensing Qualifications to Practice Medicine and Surgery.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 453-4, Hawaii Revised Statutes, is amended to read as follows:

**“§453-4 Qualifications for examination and licensure.** (a) Except as otherwise provided by law, no person shall be licensed to practice medicine or surgery unless the applicant has passed an examination and has been found to [be possessed of] possess the necessary qualifications.

(b) Before any applicant shall be eligible for the examination, the applicant shall furnish proof satisfactory to the board that:

- (1) The applicant is of demonstrated competence and professional knowledge;
- (2) (A) The applicant is a graduate of a medical school or college whose program leading to the M.D. degree is accredited by the Liaison Committee on Medical Education, and has served a residency of at least one year in a program which has been accredited for the training of resident physicians by the Accreditation Council for Graduate Medical Education, or if outside the United States, in a program which is shown by the applicant to the satisfaction of the board to possess standards substantially the equivalent of those required for such accreditation by the Accreditation Council for Graduate Medical Education; or
- (B) The applicant is a graduate of a foreign medical school and has had at least two years of residency in a program accredited by the Accreditation Council for Graduate Medical Education, and:
  - (i) Holds the national certificate of the Educational Commission for Foreign Medical Graduates, or its successor; or
  - (ii) Holds the certificate of the Fifth Pathway Program of the American Medical Association;

provided that for a period of two years after June 26, 1990, the requirements of subsection (b)(2)(B)(i) and (ii) shall not be appli-



cable to any applicant who has had four years of residency in a program accredited by the Accreditation Council for Graduate Medical Education.

(c) Applicants who have passed the National Board of Medical Examiners examination (NBME), the Federation Licensing Examination (FLEX), or the United States Medical Licensing Examination (USMLE), or a combination of these examinations as approved by the board, with scores deemed satisfactory by the board, and who meet the requirements of subsection (b) shall be licensed without the necessity of any further examination; provided that with respect to any applicant, the board may require letters of evaluation, professional evaluation forms, and interviews with chiefs of service or attending physicians who have been associated with an applicant, or chief residents on a service who have been associated with an applicant during the applicant's training or practice, to be used by the board in assessing the applicant's qualifications to practice medicine.

(d) Applicants who are licensed in another state by virtue of having passed a state-produced examination may qualify for licensure if they have passed the Special Purpose Examination (SPEX) and meet the requirements of subsection (b); provided that the board may require letters of evaluation, professional evaluation forms, and interviews with chiefs of service or attending physicians who have been associated with an applicant, or chief residents on a service who have been associated with an applicant during the applicant's training or practice, to be used by the board in assessing the applicant's qualifications to practice medicine."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

## ACT 184

H.B. NO. 3421

A Bill for an Act Relating to Cable Communications.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 440G-12, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The director may appoint [or contract for assistants and], without regard to chapters 76 and 77, an administrator, engineers, financial analysts, and other technical staff as may be necessary and may appoint one or more attorneys for purposes of enforcing this chapter. The director shall define their powers and duties and fix their compensation. The director may also appoint clerical, stenographic, and other staff as may be necessary for the proper administration and enforcement of this chapter subject to chapters 76 and 77."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

ACT 185

H.B. NO. 3423

A Bill for an Act Relating to Motor Vehicle Warranties.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 481I-4, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Funding of the state certified arbitration program shall be provided through an initial filing fee of \$200 to be paid by the manufacturer and \$50 to be paid by the consumer upon initiating a case for arbitration under this section. Every final decision in favor of the consumer issued by the independent arbitration mechanism shall include within its relief the return of the \$50 filing fee to the consumer. The director of commerce and consumer affairs may establish a trust fund for the purpose of administering fees and costs associated with the state certified arbitration program.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

ACT 186

H.B. NO. 3459

A Bill for an Act Relating to the Department of Human Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 26-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of human services shall be headed by a single executive to be known as the director of human services.

[There shall be within the department of human services a commission to be known as the board of human services which shall sit in an advisory capacity to the director of human services on matters within the jurisdiction of the department of human services. The board shall consist of ten members: one person from each county, other than the county of Kalawao, and five at large, and the director of health as an ex officio nonvoting member.]”

SECTION 2. Statutory material to be repealed is bracketed.

SECTION 3. This Act shall take effect on July 1, 1996.

(Approved June 17, 1996.)

## ACT 187

H.B. NO. 3551

A Bill for an Act Relating to Income Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 235-2.3, Hawaii Revised Statutes, is amended to read as follows:

**“§235-2.3 Conformance to the federal Internal Revenue Code; general application.** (a) For all taxable years beginning after December 31, [1994,] 1995, as used in this chapter “Internal Revenue Code” means [subtitle A, chapter 1 of] the [federal] Internal Revenue Code of [1954] 1986, as amended as of December 31, [1994,] 1995. Chapter 1 of the Internal Revenue Code is made operative for purposes of this chapter as it applies to the determination of gross income, adjusted gross income, ordinary income and loss, and taxable income except those provisions of the Internal Revenue Code and federal [Public Law] public laws which pursuant to this chapter[, this section, and sections 235-2.4 and 235-2.5] do not apply or are otherwise limited in application[; provided that section 1202 (with respect to deductions for capital gains) of the Internal Revenue Code of 1954 as amended as of December 31, 1986, shall be operative for the purposes of this chapter until March 31, 1987, and shall apply to any capital gains properly taken before April 1, 1987, except that the deduction provided in section 1202(a) shall be fifty-five per cent of the net capital gain].

Sections 235-2, 235-2.1, and 235-2.2 shall continue to be used to determine (1) the basis of property, if a taxpayer first determined the basis of property in a taxable year to which such sections apply, and if such determination was made before January 1, 1978, and (2) gross income, adjusted gross income, ordinary income and loss, and taxable income for a taxable year to which such sections apply where such taxable year begins before January 1, 1978.

(b) The following Internal Revenue Code subchapters, parts of subchapters, sections, subsections, and parts of subsections shall not be operative for the purposes of this chapter, unless otherwise provided:

- (1) Subchapter A (sections 1 to 59A) (with respect to determination of tax liability), except section 42 (with respect to the low-income housing credit) and except sections 47 and 48, as amended, as of December 31, 1984 (with respect to certain depreciable tangible personal property). For treatment, see sections 235-110.7 and 235-110.8.
- (2) Section 78 (with respect to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit).
- (3) Section 86 (with respect to social security and tier 1 railroad retirement benefits).
- (4) Section 103 (with respect to interest on state and local bonds). For treatment, see section 235-7(b).
- (5) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see section 235-7(a)(9) to (11).
- (6) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3).
- (7) Section 135 (with respect to income from United States [saving] savings bonds used to pay higher education tuition and fees). For treatment, see section 235-7(a)(1).
- (8) Subchapter B (sections 141 to 150) (with respect to tax exemption requirements for state and local bonds).

- (9) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54.
- (10) Section 196 (with respect to deduction for certain unused investment credits).
- (11) Sections 241 to 247 (with respect to special deductions for corporations). For treatment, see section 235-7(c).
- [(12) Section 269A (with respect to personal service corporations formed or availed of to avoid or evade income tax).
- (13)] (12) Section 280C (with respect to certain expenses for which credits are allowable).
- [(14)] (13) Section 291 (with respect to special rules relating to corporate preference items).
- [(15)] (14) Section 367 (with respect to foreign corporations).
- [(16)] (15) Section 501(c)(12), (15), (16) (with respect to exempt organizations).
- [(17)] (16) Section 515 (with respect to taxes of foreign countries and possessions of the United States).
- [(18) Section 521 (with respect to exemption of farmers cooperatives from tax). For treatment, see section 421-23.
- (19)] (17) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders).
- [(20)] (18) Subchapter H (sections 581 to 597) (with respect to banking institutions). For treatment, see chapter 241.
- [(21)] (19) Section 642(a)[,] and (b)[, and (d)] (with respect to special rules for credits and deductions[.]) applicable to trusts. For treatment, see sections 235-54(b) and 235-55.
- [(22)] (20) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts).
- [(23)] (21) Subchapter L (sections 801 to 848) (with respect to insurance companies). For treatment, see sections 431:7-202 and 431:7-204.
- [(24)] (22) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55.
- [(25)] (23) Subchapter N (sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except [part IV (sections 991 to 997) (with respect to domestic international sales corporations).] sections 985 to 989 (with respect to foreign currency transactions). For treatment, see sections 235-4, 235-5, [and] 235-7(b)[,], and 235-55.
- [(26)] (24) Section 1055 (with respect to redeemable ground rents).
- [(27)] (25) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange).
- (26) Sections 1291 to 1297 (with respect to treatment of passive foreign investment companies).
- [(28)] (27) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations).
- [(29) Subchapter T (sections 1381 to 1388) (with respect to cooperatives and their patrons). For treatment, see chapter 421.
- (30)] (28) Subchapter U (sections 1391 to 1397D) (with respect to designation and treatment of empowerment zones, enterprise communities, and rural development investment areas). For treatment, see chapter 209E."

SECTION 2. Section 235-2.4, Hawaii Revised Statutes, is amended to read as follows:

**“§235-2.4 Operation of certain Internal Revenue Code provisions. (a)**

Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that the standard deduction amount in section 63(c) of the Internal Revenue Code shall instead mean:

- (1) \$1,900 in the case of:
  - (A) A joint return as provided by section 235-93, or
  - (B) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code),
- (2) \$1,650 in the case of a head of household (as defined in section 2(b) of the Internal Revenue Code),
- (3) \$1,500 in the case of an individual who is not married and who is not a surviving spouse or head of household, or
- (4) \$950 in the case of a married individual filing a separate return.

Section 63(c)(4) shall not be operative in this State. Section 63(c)(5) shall be operative, except that the limitation on basic standard deduction in the case of certain dependents shall be the greater of \$500 or such individual's earned income. Section 63(f) shall not be operative in this State.

(b) Section 219 (with respect to retirement savings) of the Internal Revenue Code shall be operative for the purpose of this chapter. For the purpose of computing the limitation on the deduction for active participants in certain pension plans for state income tax purposes, adjusted gross income as used in section 219 as operative for this chapter means federal adjusted gross income.

(c) In administering the provisions of sections 410 to 417 (with respect to special rules relating to pensions, profit sharing, stock bonus plans, etc.), sections 418 to 418E (with respect to special rules for multiemployer plans), and sections 419 and 419A (with respect to treatment of welfare benefit funds) of the Internal Revenue Code, the department of taxation shall adopt rules under chapter 91 relating to the specific requirements under such sections and to such other administrative requirements under those sections as may be necessary for the efficient administration of sections 410 to 419A.

In administering sections 401 to 419A (with respect to deferred compensation) of the Internal Revenue Code, Public Law 93-406, section 1017(i), shall be operative for the purposes of this chapter.

In administering section 402 (with respect to the taxability of beneficiary of employees' trust) of the Internal Revenue Code, the tax imposed on lump sum distributions by section 402(e) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter.

(d) Section 468B (with respect to special rules for designated settlement funds) shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at a rate equal to the maximum rate in effect for the taxable year imposed on estates and trusts under section 235-51.

(e) Section 469 (with respect to passive activities and credits limited) shall be operative for the purposes of this chapter. For the purpose of computing the offset for rental real estate activities for state income tax purposes, adjusted gross income as used in section 469 as operative for this chapter means federal adjusted gross income.

(f) Sections 512 to 514 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this subsection.

[The persons and organizations exempted by section 235-9 shall, if subject to tax under the Internal Revenue Code upon their “unrelated business taxable income”, be taxed thereon under this chapter. For the purposes of this subsection the

term “taxable income” as used in subsection (h)(2) of this section and section 235-71 shall be read as “unrelated business taxable income”.]

“Unrelated business taxable income” means the same as in the Internal Revenue Code, except that in the computation thereof sections 235-3 to 235-5, and 235-7 (except subsection (c)), shall apply, and in the determination of the net operating loss deduction [under section 235-7(d)] there shall not be taken into account any amount of income or deduction which is excluded in computing the unrelated business taxable income. Unrelated business taxable income shall not include any income from a prepaid legal service plan.

For a person described in section 401 or 501 of the Internal Revenue Code, as modified by section 235-2.3, the tax imposed by section 235-51 or 235-71 shall be imposed upon the person’s unrelated business taxable income.

(g) Section 521 (with respect to cooperatives) and subchapter T (sections 1381 to 1388, with respect to cooperatives and their patrons) shall be operative for the purposes of this chapter as to any cooperative fully meeting the requirements of section 421-23, except that Internal Revenue Code section 521 cooperatives need not be organized in Hawaii.

[(g)] (h) Sections 527 (with respect to political organizations) and 528 (with respect to certain homeowners associations) shall be operative for the purposes of this chapter and the taxes imposed in each such section are hereby imposed by this chapter at the rates determined under section 235-71.

[(h)] (i) Section 641 (with respect to imposition of tax) of the Internal Revenue Code shall be operative for the purposes of this chapter subject to the following:

- (1) The deduction for exemptions shall be allowed as provided in section 235-54(b).
- (2) The deduction for contributions and gifts in determining taxable income shall be limited to the amount allowed in the case of an individual, unless the contributions and gifts are to be used exclusively in the State.
- (3) The tax imposed by section 1(e) of the Internal Revenue Code as applied by section 641 of the Internal Revenue Code is hereby imposed by this chapter at the rate and amount as determined under section 235-51 on estates and trusts.

[(i)] (j) Section 644 (with respect to special rule for gain on property transferred to trust at less than fair market value) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter; except that the determination of the interest rate established under section 6621 of the Internal Revenue Code referred to in section 644(a)(2) of the Internal Revenue Code shall instead be the interest rate established under section 231-39(b)(4).

[(j)] (k) Section 667 (with respect to treatment of amounts deemed distributed by trusts in preceding years) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter; except that the reference to tax-exempt interest to which section 103 of the Internal Revenue Code applies in section 667(a) of the Internal Revenue Code shall instead be a reference to tax-exempt interest to which section 235-7(b) applies.

[(k)] Sections 991 to 997 (with respect to domestic international sales corporations) of the Internal Revenue Code shall be operative for the purposes of this chapter; provided that any corporation electing to be a domestic international sales corporation under this chapter shall be incorporated and have its principal place of business in this State.]

(l) Section 1034 (with respect to rollover of gain on sale of principal residence) of the Internal Revenue Code shall be operative for the purpose of this chapter; provided section 1034(a) (with respect to nonrecognition of gain) of the Internal Revenue Code shall apply only to:

- (1) A taxpayer who purchases a replacement residence which is located within the State;
- (2) A taxpayer who is a resident of the State, taxable upon the taxpayer's entire income, computed without regard to source within the State; or
- (3) A taxpayer (or the taxpayer's spouse if the old residence and the new residence are each used by the taxpayer and the taxpayer's spouse as their principal residence) who, while serving on extended active duty with the armed forces of the United States, purchased a residence in Hawaii and later sold the residence.

(m) Section 1212 (with respect to capital loss carrybacks and carryforwards) of the Internal Revenue Code shall be operative for the purposes of this chapter; except that for the purposes of this chapter the capital loss carryback provisions of section 1212 shall not be operative and the capital loss carryforward allowed by section 1212(a), shall be limited to five years.

(n) Subchapter S (sections 1361 to 1379) (with respect to tax treatment of S corporations and their shareholders) of chapter 1 of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in part VII.

(o) Subchapter C (sections 6221 to 6233) (with respect to tax treatment of partnership items) of chapter 63 of the Internal Revenue Code shall be operative for the purposes of this chapter.

(p) Subchapter D (sections 6241 to 6245) (with respect to tax treatment of subchapter S items) of chapter 63 of the Internal Revenue Code shall be operative for the purposes of this chapter, and shall be interpreted with due regard to part VII.

(q) Section 7518 (with respect to capital construction fund for commercial fishers) of the Internal Revenue Code shall be operative for the purposes of this chapter. Qualified withdrawals for the acquisition, construction, or reconstruction of any qualified asset which is attributable to deposits made before the effective date of this section shall not reduce the basis of the asset when withdrawn. Qualified withdrawals shall be treated on a first-in-first-out basis."

SECTION 3. Section 235-2.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Reference in provisions of [subtitle A, chapter 1, of] the Internal Revenue Code which are operative in this State to provisions in the Internal Revenue Code which are not operative in this State shall be considered inoperative for the purposes of determining gross income, adjusted gross income, ordinary income and loss, and taxable income; provided that [references]:

- (1) References to time limits and other administrative provisions in subtitle F (sections 6001 to 7873) of the Internal Revenue Code contained in operative sections of [subtitle A, chapter 1, of] the Internal Revenue Code shall be deemed references to applicable provisions of this chapter or chapter 231 or 232, and in the absence of applicable provisions in this chapter or chapter 231 or 232, then to rules adopted by the director of taxation under subsection (b)[.];
- (2) If inoperative provisions of [subtitle A, chapter 1, of] the Internal Revenue Code have been codified in this chapter such references shall be deemed references to the codified provisions in this chapter. Transitory and savings provisions in federal Public Laws amending sections of the Internal Revenue Code operative in this chapter shall be opera-

tive for the purposes of this chapter. Provisions in this chapter or chapter 231 or 232 in conflict with the Internal Revenue Code or transitory or savings provisions in federal Public Law shall control[.]; and

- (3) Retroactive provisions in federal Public Laws amending sections of the federal Internal Revenue Code operative in this chapter affecting taxable years beginning or ending before the December 31 date in section 235-2.3 shall be operative for the purposes of this chapter; provided that the effective dates in Public Law 96-471 placing it in effect for the taxable year 1980 shall be operative for the purposes of this chapter."

SECTION 4. Section 235-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The Internal Revenue Code, so far as made [applicable] operative by this chapter, is a statute adopted and incorporated by reference. [Whenever, in] The Internal Revenue Code shall be applied using changes in nomenclature and other language, including the omission of inapplicable language, where necessary to effectuate the intent of this section. In the Internal Revenue Code, [the words] references to terms such as:

- (1) "Secretary or his delegate"[, or words of like import are used, such words mean] shall refer to the director of taxation and the director's duly authorized subordinates[, and the words "estate";
- (2) "Estate taxes" [mean] shall refer to the estate and transfer tax imposed by chapter 236D[.];
- (3) "The highest rate of tax imposed upon individuals" or "39.6 per cent" shall refer to the highest rate imposed upon individuals under section 235-51;
- (4) "The highest rate of tax imposed upon corporations" shall refer to the highest rate imposed upon corporations under section 235-71; and
- (5) "Interest at the underpayment rate" or "interest at the overpayment rate" shall refer to the interest rate set forth in section 231-39(b)(4) or section 231-23(d)(1), as the case may be."

SECTION 5. Section 235-55, Hawaii Revised Statutes, is amended to read as follows:

**"§235-55 Tax credits for resident taxpayers.** (a) Whenever an individual or person liable to the taxes imposed upon individuals, who is a resident of the State[,], or who has filed a joint resident return under section 235-93, has become liable for income taxes to a state, or to the District of Columbia, Puerto Rico, or any other territory or possession of the United States, or to a foreign country upon any part of the individual's or person's taxable income for the taxable year, derived or received from sources without the State and taxed under the laws of such other jurisdiction irrespective of the residence or domicile of the recipient, there shall be credited against the tax payable by the individual or person under this chapter the tax so paid by the individual or person to the other jurisdiction upon the individual's or person's producing for the department of taxation satisfactory evidence:

- (1) [of] Of such tax payment[.]; and
- (2) [that] That the laws of the other jurisdiction do not allow the individual or person a credit against the taxes imposed by such jurisdiction for the taxes paid or payable under this chapter, or do allow such credit in an amount which has been deducted in computing the amount of credit sought under this section.



(b) The application of such credit, however:

- [(A)] (1) Shall not be allowed with respect to any taxable income or any tax which under subchapter N of chapter 1 of the Internal Revenue Code of 1954 (which is applicable for federal purposes but not for state purposes) is or may be the subject of an exclusion, exemption, or tax credit; and
- [(B)] (2) Shall not operate to reduce the tax payable under this chapter to an amount less than that which would have been payable had the taxpayer been taxable only on the income from property owned, personal services performed, trade or business carried on, and other sources in the State.

[(b)] (c) If any taxes paid to another jurisdiction for which a taxpayer has been allowed a credit under this section are at any time credited or refunded to the taxpayer, such fact shall be reported by the taxpayer to the department within twenty days after the credit or refund. Failure to make such report shall be deemed failure to make a return and subject to the penalties imposed by law in such cases. A tax equal to the credit allowed for the taxes so credited or refunded shall be due and payable from the taxpayer upon notice and demand from the department. If the amount of such tax is not paid within ten days from the date of the notice and demand, the taxpayer shall be subject to the usual penalties and interest for delinquency in payment.

[(c)] (d) Nothing in this section shall be construed to permit a credit against the taxes imposed by this chapter on account of federal income taxes."

SECTION 6. Section 235-61, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) For each withholding period (whether weekly, biweekly, monthly, or otherwise) the amount of tax to be withheld under this section shall be at a rate which, for the taxable year, will yield the tax imposed by section 235-51 upon each employee's annual wage, as estimated from the employee's current wage in any withholding period[.], but (for the purposes of this subsection of the rates provided by section 235-51 the maximum to be taken into consideration shall be eight per cent. The tax for the taxable year shall be calculated upon the following assumptions:

- (1) That the employee's annual wage, as estimated from the employee's current wage in the withholding period, will be the employee's sole income for the taxable year;
- (2) That there will be no deductions therefrom in determining adjusted gross income;
- (3) That in determining taxable income there shall be a standard deduction allowance which shall be an amount equal to one exemption (or more than one exemption if so prescribed by the director) unless (A) the taxpayer is married and the taxpayer's spouse is an employee receiving wages subject to withholding, or (B) the taxpayer has withholding exemption certificates in effect with respect to more than one employer. For the purposes of this section, any standard deduction allowance under this paragraph shall be treated as if it were denominated a withholding exemption;
- (4) That in determining taxable income there also will be deducted the amount of exemptions and withholding allowances granted to the employee in the computation of taxable income, as shown by a certificate to be filed with the employer as provided by subsection (f); and

- (5) If it appears from the certificate filed pursuant to subsection (f) that the employee, under section 235-93, is entitled to make a joint return, that the employee and the employee's spouse will so elect."

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1995.

(Approved June 17, 1996.)

## ACT 188

H.B. NO. 3533

A Bill for an Act Relating to Boating.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 200, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§200- Responsibility of vessel owner; evidence of unauthorized mooring.** (a) In any proceeding for violation of any statute or rule relating to the mooring of vessels, evidence of ownership including:

- (1) The state registration number;
- (2) The documented name or number of a vessel; or
- (3) Any other identifying name or number;

affixed to a vessel involved in the violation shall create a presumption that the owner of the vessel was the person who unlawfully moored or placed the vessel at the point where, and during the time when, the violation occurred.

(b) A vessel owner may present competent evidence that the vessel was sold, transferred, or stolen, or was moored or placed in accordance with prior written permission of the State or due to an emergency berthing condition to rebut the presumption established in subsection (a)."

SECTION 2. Chapter 200, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§200- Sailing school vessels; rules.** The department shall adopt rules for the regulation and operation of sailing school vessels. Until the rules are adopted, sailing school vessels shall be classified as recreational vessels and subject to rules adopted under sections 200-4 and 200-9 that pertain to recreational vessels; provided that sailing school vessels shall be exempt from:

- (1) All requirements for permits and fees; and
- (2) All rules pertaining to:
  - (A) Mooring or anchoring of recreational vessels at any offshore mooring area; and
  - (B) Living aboard a vessel while the vessel is moored within ocean waters of the State."

SECTION 3. Section 200-1, Hawaii Revised Statutes, is amended by adding the definition of "sailing school vessel" to be appropriately inserted and to read as follows:

““Sailing school vessel” means a vessel:

- (1) Less than five hundred gross tons, carrying six or more individuals who are sailing school students or sailing school instructors principally equipped for propulsion by sail even if the vessel has an auxiliary means of propulsion; and
- (2) Owned or leased by a corporation, association, organization, or other duly chartered entity determined under the Internal Revenue Code to be exempt from the federal income tax and operated for the purpose of providing sailing instruction and therapeutic, educational, recreational, vocational, or family counseling services to emotionally disturbed youth or to youth sentenced by the family court to a rehabilitative sailing program and their families.”

SECTION 4. Section 200-7, Hawaii Revised Statutes, is amended to read as follows:

“**[[§200-7]] Waiver of mooring charges.** The department shall waive the mooring charge for [any]:

- (1) Any and all sea scout craft using moorings belonging to or controlled by the State, when moorings are available as determined by the department; provided that<sup>1</sup> the craft are owned and used exclusively for the purpose of regular organized sea scout groups[.]; and
- (2) Any and all sailing school vessels.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 6. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

#### Notes

1. Should be underscored.
2. Edited pursuant to HRS §23G-16.5.

## ACT 189

H.B. NO. 3542

A Bill for an Act Relating to Garnishment of Inmate Moneys.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the current law severely limits garnishment, levy, or any like process of attachment to moneys earned by inmates while incarcerated, whether through employment while incarcerated or by windfall. Yet, inmates often have outstanding financial obligations or incur new financial obligations while incarcerated. To ensure that inmates accept responsibility for their actions, financial obligations for certain debts should not be suspended during the period of incarceration.

The purpose of this Act is to permit the director of public safety to garnish committed persons' funds that are held by the department for claims related to restitution to victims, child support payments, expenses, and damages caused by the inmate at the correctional facility.

SECTION 2. Chapter 353, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§353- Garnishment to cover nonbudgeted costs.** All moneys received by windfall or earned by a committed person shall be subject to garnishment, levy, or any like process of attachment by the director for a cause of action or claim against the committed person in the following order of priority:

- (1) Restitution to victims;
- (2) Child support payments by order of the court;
- (3) Replacement costs for any facility damage that may have been caused by the committed person and all other costs associated with the facility damage; and
- (4) Reimbursement for the extraordinary cost of photocopying or postage which has been advanced by the department for litigation purposes.

All moneys collected by the department pursuant to paragraph (3) or (4) shall be used to reimburse, in whole or in part, the nonbudgeted costs and expenses.”

SECTION 3. Section 353-22, Hawaii Revised Statutes, is amended to read as follows:

**“§353-22 Earnings exempt from garnishment, etc.** No moneys earned by a committed person and held by the department, to any amount whatsoever, shall be subject to garnishment, levy, or any like process of attachment for any cause or claim against the committed person, except [for restitution to victims and child support payments by order of the court.] as provided for in section 353-\_\_\_\_\_.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 190**

S.B. NO. 865

A Bill for an Act Relating to Public Land Liability Immunity.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Millions of residents and visitors use our public beaches and the adjacent ocean for recreational purposes on a yearly basis. Unfortunately, in some instances drownings and other serious injuries have resulted from these activities. The counties have largely had to deal with the liability arising from the injuries and the resulting lawsuits. The legislature finds that counties need protection from liability arising from dangerous natural conditions in the ocean adjacent to public beach parks. The legislature finds that it is necessary to strike an equitable balance between the privilege of residents and visitors alike to enjoy public beaches in a responsible manner and the duty of the government to take reasonable measures to protect citizens from harm by providing adequate warning. Accordingly, the purpose of this Act is to establish a process in which the State and counties can provide both meaningful and legally adequate warnings to the public regarding

extremely dangerous natural conditions in the ocean adjacent to public beach parks. Specifically, this Act establishes a process by which public entities are provided protection from liability when they have provided adequate warning to the public through the design and placement of warning signs in our beach parks. The legislature believes that this Act will provide a process by which a legally adequate warning system can be developed at public beach parks which will increase public safety, reduce ocean-related accidents, and protect the State and counties from the unlimited liability they face with regard to activities in the ocean and at public beaches.

SECTION 2. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§663- Conclusive presumptions relating to duty of public entities to warn of dangers at public beach parks.** (a) The State or county operating a public beach park shall have a duty to warn the public specifically of dangerous shorebreak or strong current in the ocean adjacent to a public beach park if these conditions are extremely dangerous, typical for the specific beach, and if they pose a risk of serious injury or death.

(b) A sign or signs warning of dangerous shorebreak or strong current shall be conclusively presumed to be legally adequate to warn of these dangerous conditions, if the State or county posts a sign or signs warning of the dangerous shorebreak or strong current and the design and placement of the warning sign or signs has been approved by the chairperson of the board of land and natural resources. The chairperson shall consult the governor’s task force on beach and water safety prior to approving the design and placement of the warning sign or signs.

(c) A sign or signs warning of other extremely dangerous natural conditions in the ocean adjacent to a public beach park shall be conclusively presumed to be legally adequate to warn of the dangerous natural conditions, if the State or county posts a sign or signs warning of the extremely dangerous natural condition and the design and placement of the sign or signs have been approved by the chairperson of the board of land and natural resources. The chairperson shall consult the task force on beach and water safety prior to issuing an approval of the design and placement of a warning sign or signs pursuant to this section.

(d) The State or county operating a public beach park may submit a comprehensive plan for warning of dangerous natural conditions in the ocean adjacent to a public beach park to the chairperson of the board of land and natural resources who shall review the plan for adequacy of the warning as well as the design and placement of the warning signs, devices, or systems. The chairperson shall consult with the task force on beach and water safety prior to issuing an approval of the plan. The task force on beach and water safety may seek public comment on the plan. In the event that the chairperson approves the plan for the particular beach park after consulting with the task force and the State or county posts the warnings provided for in the approved plan, then the warning signs, devices, or systems shall be conclusively presumed to be legally adequate to warn for all dangerous natural conditions in the ocean adjacent to the public beach park.

(e) Neither the State nor a county shall have a duty to warn on beach accesses, coastal accesses, or in areas that are not public beach parks of dangerous natural conditions in the ocean.

(f) Neither the State nor any county shall have a duty to warn of dangerous natural conditions in the ocean other than as provided in this section.

(g) In the event that a warning sign, device, or system posted or established in accordance with this section is vandalized, otherwise removed, or made illegible,

the conclusive presumption provided by this section shall continue for a period of five days from the date that the vandalism, removal, or illegibility is discovered by the State or county. The State or county operating a public beach park shall maintain a record regarding each report of vandalism, removal, or illegibility that results in the replacement of a warning sign, device, or system at a State or county public beach park. The record shall include the date and time of the reporting and the replacement of the warning sign, device, or system. The State and county shall provide a copy of the record annually to the chairperson of the board of land and natural resources and the task force on beach and water safety.

(h) The chairperson shall consider the needs of the public to be warned of potentially dangerous conditions in the ocean adjacent to a public beach park prior to issuing an approval for the design and placement of a warning sign or a comprehensive plan. The chairperson may require warning devices or systems in addition to the signing before approving the design and placement of a warning sign or a comprehensive plan. The approval of the design and placement of a warning sign, device, system or comprehensive plan provided in this section shall be a discretionary decision under chapter 662.

(i) Chapter 91, Hawaii Revised Statutes, shall not apply to any process, including any action taken by the chairperson, established or made pursuant to this section.

(j) Nothing in this section shall be construed to have an impact upon governmental liability for the performance of rescue services or duties and responsibilities of lifeguards other than the duty to warn as set forth in this section.”

SECTION 3. There is established the task force on beach and water safety which shall be administratively attached to the department of land and natural resources. The task force shall provide consultation to the chairperson of the board of land and natural resources regarding the design and placement of warning signs, devices, or systems at public beach parks including any comprehensive plan submitted by the State or county operating a public beach park to the chairperson of the board of land and natural resources for approval. The task force shall consist of the following members, who shall serve without compensation:

- (1) The chairperson of the board of land and natural resources, or a designated representative;
- (2) The director of business, economic development, and tourism, or a designated representative;
- (3) The chairperson of the department of oceanography at the University of Hawaii at Manoa, or a designated representative; and
- (4) Four persons appointed by the governor, each of whom shall be publicly employed water safety personnel; provided that the governor shall appoint one person from each of the respective counties.

The chairperson of the board of land and natural resources shall serve as chairperson of the task force. The task force shall submit a report of its recommendations to the legislature and the governor no later than twenty days prior to the convening of the 1997, 1998, and 1999 Regular Session.

SECTION 4. This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect on July 1, 1996; provided that this Act shall be repealed on June 30, 1999.

(Approved June 17, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 191**

S.B. NO. 1602

A Bill for an Act Relating to Airport Security.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 261-1, Hawaii Revised Statutes, is amended to read as follows:

**“§261-1 Definitions.** As used in this chapter[, unless the context otherwise requires]:

- (1) “Aeronautics” means the science and art of flight, including but not limited to transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, or other air navigation facilities; and instruction in flying or ground subjects pertaining thereto;
- (2) “Aircraft” means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air;
- (3) “Airport” means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, including approaches, together with all airport buildings and facilities located thereon;
- (4) “Department” means the department of transportation;
- (5) “Director” means the director of transportation;
- (6) “Air navigation facility” means any facility used in, available for use in, or designed for use in, aid of air navigation, including any structures, mechanisms, light, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities;
- (7) “Operation of aircraft” or “operate aircraft” means the use, navigation, or piloting of aircraft in the airspace over the State or upon any airport within the State;
- (8) “Airman” means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way, and any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, airframes, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher, or air-traffic control-tower operator; but does not include any individual employed outside the

- United States, and its territories and possessions, or any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, or any individual performing inspection or mechanical duties in connection with aircraft owned or operated by the individual;
- (9) "Airport hazard" has the meaning defined by section 262-1;
  - (10) "State airway" means a route in the navigable airspace over and above the lands or waters of the State, designated by the department as a route suitable for air navigation;
  - (11) "Municipality" means any county or other political subdivision or public corporation of the State. "Municipal" means pertaining to a municipality as herein defined;
  - (12) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof;
  - (13) "Police officer" means a police officer and any other state or county officer charged with the enforcement of state laws.]

"Aeronautics" means the science and art of flight, including but not limited to transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, or other air navigation facilities; and instruction in flying or ground subjects pertaining thereto.

"Air navigation facility" means any facility used in, available for use in, or designed for use in, aid of air navigation, including any structures, mechanisms, light, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

"Aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air.

"Airman" means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way, and any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, airframes, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher, or air-traffic control-tower operator; but does not include any individual employed outside the United States, and its territories and possessions, or any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, or any individual performing inspection or mechanical duties in connection with aircraft owned or operated by the individual.

"Airport" means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, including approaches, together with all airport buildings and facilities located thereon.

"Airport hazard" has the meaning defined by section 262-1.

"Criminal history record check" means an examination of an individual's criminal history records by means including, but not limited to, fingerprint analysis and name inquiry into state and national criminal history record files.

"Criminal history record information" means criminal history information received from state and national criminal history record checks.

"Department" means the department of transportation.



“Director” means the director of transportation.

“Municipal” means pertaining to a municipality as herein defined.

“Municipality” means any county or other political subdivision or public corporation of the State.

“Operation of aircraft” or “operate aircraft” means the use, navigation, or piloting of aircraft in the airspace over the State or upon any airport within the State.

“Person” means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.

“Police officer” means a police officer and any other state or county officer charged with the enforcement of state laws.

“State airway” means a route in the navigable airspace over and above the lands or waters of the State, designated by the department as a route suitable for air navigation.”

SECTION 2. Section 261-17, Hawaii Revised Statutes, is amended to read as follows:

**“§261-17 Enforcement of laws.** (a) [Enforcement officers.] The director of transportation, officers, and employees of the department of transportation, and every state and county officer charged with the enforcement of state laws and ordinances, shall enforce and assist in the enforcement of this chapter and of all rules[, regulations,] and orders issued pursuant thereto and of all other laws of the State; and in that connection each of the persons may inspect and examine at reasonable hours any premises, and the buildings and other structures thereon, where airports, air navigation facilities, or other aeronautical activities are operated or conducted. In aid of the enforcement of this chapter, the rules[, regulations,] and orders issued pursuant thereto, and all other laws of the State, the powers of police officers are conferred upon the director, and such of the officers, employees, agents, and representatives of the department as may be designated by the director to exercise such powers, including the power to serve and execute warrants and arrest offenders, and the power to serve notices and orders. For the purposes of this subsection the term “agents and representatives” includes persons performing services at airports under contract with the department.

(b) No person shall provide or be hired to provide armed security services at airports within the State without first submitting statements signed under penalty of false swearing by the person indicating whether the person has ever been convicted of a crime which, by law, would preclude the person from carrying or using a firearm in the course of the person’s employment, including a felony conviction in the State of Hawaii or elsewhere, and providing consent to the department to have a criminal history record check conducted by the Federal Bureau of Investigation to obtain criminal history record information. The person shall also be fingerprinted for the purpose of a Federal Bureau of Investigation criminal history record check. The Hawaii criminal justice data center may also assess the existing providers of armed security services at airports within the State, or their employees or applicants for employment, or any applicant for employment to provide armed security services at airports within the State, a reasonable fee for each criminal history record check performed by the Federal Bureau of Investigation.

[ (b) Court aid.] (c) The department may, in the name of the State, enforce [the provisions of] this chapter and the rules[, regulations,] and orders issued pursuant thereto by injunction or other legal process in the courts of the State.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

## ACT 192

S.B. NO. 1738

A Bill for an Act Relating to Community-based Economic Development.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the community-based economic development program established in 1990, to increase self-determination and diversification in Hawaii's communities through a revolving fund and technical assistance, has provided assistance to twenty-eight organizations statewide and leveraged state funds seven times over with the creation of two hundred nineteen business start-ups and expansions.

The legislature further finds that there is a need to clarify program definitions and functions, differentiate the Hawaii community-based economic development program from other programs that are labelled "community-based," and provide additional financing mechanisms to ensure the continued success of the community-based economic development program.

SECTION 2. Section 210D-1, Hawaii Revised Statutes, is amended to read as follows:

**"[[§210D-1]] Findings and purpose.** The legislature finds that:

- (1) It is in the best interest of the State to bring about a diversification of opportunities in all aspects of life for the residents and communities of the State;
- (2) [Traditional and small community-based] Community-based enterprises play an important part in providing [the] a diversification of opportunities for Hawaii's residents and communities;
- (3) [Traditional and small community-based] Community-based enterprises [exist in Hawaii and] are characterized by their interests not only in profits but in community empowerment, that is, building the community to enable it to be [self-sufficient,] more self-reliant, which encourages diversification of opportunities for Hawaii's residents and communities;
- (4) [Traditional and small community-based] Community-based enterprises have the potential to increase [self-sufficiency,] self-determination, provide employment opportunities, strengthen community identity, retain and create community cultural anchors, and reinforce community social, cultural, economic, and spiritual values, and are thus of crucial importance in securing the diversification of opportunities;
- (5) Programs to develop [traditional and] community-based enterprises have the potential to increase [self-sufficiency] self-reliance and provide employment opportunities to Hawaii's people;
- (6) Conventional financial institutions traditionally do not provide loans to [initiate the establishment of] establish or expand community-based

enterprises [or to initiate establishment or expansion of traditional enterprises];

- (7) No present state agency or program has the authority to financially assist [traditional and small] community-based enterprises; and
- (8) The State should initiate a program to assist community-based enterprises through loans [and], grants[.], and technical assistance.

The purpose of this chapter is to establish a program of [loans and grants to financially] technical and financial assistance for community-based organizations to assist the establishment and development of [traditional and small] community-based enterprises in the State.”

SECTION 3. Section 210D-2, Hawaii Revised Statutes, is amended to read as follows:

“**[§210D-2]] Definitions.** As used in this chapter:

“Community-based economic development” means [a business or enterprise that can be carried on a small scale in a neighborhood, such as, but not limited to, a cottage industry; export-oriented arts, crafts and fashion operations; and backyard fish farming.] a community institution-building process that results in community-based enterprises and other economic development activities which are designed and implemented by a community; consistent with a community’s values, culture, and vision; and intended to increase community control over local resources and decision-making processes.

“Community-based organization” means a membership-based, nonprofit corporation incorporated in the State of Hawaii that is organized and controlled by either a geographic community, a community of identity, or a community of interest and which is directly involved in community-based economic development activities.

“Community of identity” means a group of people who may not live in the same geographic area but who are bound together through a common ethnicity or other personal characteristic such as age or social status.

“Community of interest” means a group of people who may not live in the area but who are bound together through a common economic interest such as coffee growers or an aquaculture cooperative.

“Council” means the community-based economic development advisory council.

“Department” means the department of business, economic development, and tourism.

[“Traditional industry” means an industry or enterprise traditionally carried on by native Hawaiians, such as taro farming.]”

SECTION 4. Section 210D-3, Hawaii Revised Statutes, is amended to read as follows:

“**[§210D-3]] Hawaii community-based economic development [loan and grant] technical and financial assistance program.** There is established the Hawaii community-based economic development [loan and grant] technical and financial assistance program, placed within the department.”

SECTION 5. Section 210D-4, Hawaii Revised Statutes, is amended to read as follows:

“**§210D-4 Hawaii community-based economic development revolving fund; established.** There is established a revolving fund to be known as the Hawaii

community-based economic development revolving fund from which moneys shall be loaned [or], granted by the department under this chapter. All moneys appropriated to the fund by the legislature, received [in repayment] as repayments of [loan principal, or payment] loans, payments of interest[, and] or fees, received as royalties, shall be deposited into the revolving fund and used for the purposes of this chapter. The department may use all appropriations and other moneys in the revolving fund not appropriated for a designated purpose to make grants or loans, provided that at no time shall the department reallocate funds from the loan program to the grant program so that insufficient funds remain available to make loans.”

SECTION 6. Section 210D-5, Hawaii Revised Statutes, is amended to read as follows:

**“[§210D-5] Community-based economic development advisory council; established.** There is established the community-based economic development advisory council, which shall consist of [eleven] twelve members. The director of business, economic development, and tourism [and], the chairperson of the board of agriculture, and the chairperson of the office of Hawaiian affairs, or their respective designees, shall be ex officio voting members of the council. The remaining nine members shall be appointed by the governor in accordance with section 26-34. Each county shall be represented by at least one member who is a resident of that county, and at least one member of the council shall be a representative of the financial community. The council shall be placed for administrative purposes in the department of business, economic development, and tourism.”

SECTION 7. Section 210D-7, Hawaii Revised Statutes, is amended to read as follows:

**“[§210D-7] Authority of council.** The council shall review all [business plans, except financial statements or personal information,] requests for financial assistance to assess whether the proposed [business] community-based economic development activity or enterprise is likely to achieve the purposes of this chapter. The council shall make recommendations to the department regarding the appropriateness of the proposed [business] activity or enterprise, and the department shall then have final authority to approve or disapprove the [loan or grant] application[.] for financial assistance.”

SECTION 8. Section 210D-8, Hawaii Revised Statutes, is amended to read as follows:

**“[§210D-8] Powers and duties.** The department shall have the necessary powers to carry out the purposes of this chapter, including the following:

- (1) With advice from the council, prescribe the qualifications for eligibility of applicants for loans[;] and grants;
- (2) With advice from the council, establish preferences and priorities in determining eligibility for [loans and loan repayment requirements;] financial assistance;
- (3) Establish the conditions, consistent with the purpose of this chapter, for the [granting or for the continuance of a loan;] awarding of financial assistance;
- (4) Provide for inspection at reasonable hours of [the plant] facilities, books, and records of a community-based [business or enterprise] organization which has applied for or has been [granted a loan]

- awarded financial assistance and require the submission of progress and final reports;
- (5) [Make] Provide loans [and], and grants for [traditional or small] community-based economic development activities and community-based enterprises[, including loans or grants for start-up financing of plant construction, conversion, expansion, the acquisition of land for expansion, the acquisition of equipment, machinery, supplies, or materials or for the supplying of working capital,] for purposes consistent with this chapter;
  - (6) Determine the necessity for and the extent of security required in a loan;
  - (7) Prescribe and provide appropriate management counseling and monitoring of business activities;
  - (8) Administer the Hawaii community-based economic development revolving fund;
  - (9) Include in its budget for subsequent fiscal periods amounts necessary to effectuate the purposes of this chapter;
  - (10) Participate in loans made to qualified persons by private lenders;
  - (11) Establish interest rates chargeable by the State for direct [loans] and [by private lenders for] participation loans; and
  - (12) Adopt rules pursuant to chapter 91 to implement this chapter.”

SECTION 9. Section 210D-9, Hawaii Revised Statutes, is amended to read as follows:

“**[§210D-9] Loans; limitation and terms.** Loans made under this chapter shall be for the purposes and in accordance with the terms specified in [classes “A” and “B” in] paragraphs (1) and (2) and shall be made only to applicants who meet the eligibility requirements specified therein.

- (1) [Class A community-based] Community-based enterprise [ownership] establishment and improvement loans may be made [only] to provide for:
  - (A) The start-up costs, purchase or improvement of a [traditional or] community-based enterprise[;] or working capital; and
  - (B) The purchase, construction, or improvement of facilities[.];

and

[The loans shall be for an amount not to exceed \$500,000 and for a term not to exceed twenty years.]

- (2) [Class B operating] Operating loans may be made [only] to carry on and improve an existing enterprise, including:
  - (A) The purchase of equipment; and
  - (B) The payment of production and marketing expenses including materials, labor, and services.

The loans shall be for an amount not to exceed \$500,000 and for a term not to exceed [twenty] ten years.”

SECTION 10. Section 210D-10, Hawaii Revised Statutes, is amended to read as follows:

“**[§210D-10] Terms of loans.** Loans shall be made to qualified applicants with the following terms and conditions:

- (1) No loan shall be granted unless financial assistance is not otherwise available to the applicant;

- (2)] (1) The amount of the outstanding balance on all loans issued under this chapter to any one applicant at any one time shall not exceed \$500,000;
- [(3)] (2) The maximum term of a loan shall not exceed [twenty] ten years;
- [(4)] (3) Each loan shall bear simple interest at a rate of not less than three and not more than ten per cent a year, depending on the nature of the loan; and
- [(5)] (4) The commencement date for the repayment of the first installment on principal and interest of each loan may be deferred by the director of business, economic development, and tourism for a period not to exceed two years."

SECTION 11. Section 210D-11, Hawaii Revised Statutes, is amended to read as follows:

**"§210D-11 Grants; conditions and qualifications.** (a) Grants shall be made for amounts not to exceed [ \$500,000 ] \$100,000 for each applicant. Applications for grants shall be made to the department and contain such information as the department shall require by rules adopted pursuant to chapter 91. At a minimum, the applicant must show that:

- (1) The grant shall be used exclusively for [a traditional or small] community-based economic development activities or a community-based business or enterprise that are consistent with the purposes of this chapter for a continuous period of at least five years;
- (2) The [traditional or small] community-based business or enterprise shall have applied for or received all applicable licenses and permits;
- (3) The applicant will comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, or physical handicap;
- (4) The grant shall not be used for purposes of entertainment or perquisites;
- (5) The applicant shall comply with other requirements as the department of business, economic development, and tourism may prescribe;
- (6) All activities and improvements undertaken with funds received shall comply with all applicable federal, state, and county statutes and ordinances, including applicable building codes and agency rules;
- (7) The applicant will indemnify and save harmless the State of Hawaii and its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken with funds provided hereunder, and procure sufficient insurance to provide this indemnification if requested to do so by the department; and
- (8) The facilities will not be used and are not intended to be used for sectarian instruction or as a place of worship.

(b) To receive a grant hereunder for community-based economic development activities or development of a [traditional or small] community-based enterprise, an applicant shall:

- (1) Be either:
  - [(A)] An individual or association who, at the date of the application, has owned and operated a traditional or small community-based business or enterprise for at least two years; or
  - [(B)] (A) A profit subsidiary of a nonprofit community-based organization incorporated under the laws of the State; or
  - [(C)] (B) A nonprofit community-based organization determined to be exempt from federal income taxation by the Internal Revenue Service; or

[(D)] (C) A cooperative association.

- (2) In the case of a nonprofit organization, have a governing board whose members have no material conflict of interest and serve without compensation, have bylaws or policies which describe the manner in which business is conducted and policies relating to nepotism and management of potential conflict of interest situations, and employ or contract with no two or more members of a family or kin of the first or second degree unless specifically permitted by the department;
- (3) Agree to make available to the department all records the applicant may have relating to the operation of the [traditional or] community-based enterprise, to allow state agencies to monitor the applicant's compliance with the purpose of this chapter; and
- (4) Establish, to the satisfaction of the department, that sufficient funds are available for the effective operation of the activity, business, or enterprise for the purpose for which the grant is awarded.

[(c) Prior to the adoption of rules pursuant to section 210D-8, the department may provide grants to applicants who meet the minimum criteria for eligibility set forth in this chapter.]”

SECTION 12. Section 210D-12, Hawaii Revised Statutes, is amended to read as follows:

“**[[§210D-12]] Priorities and preferences.** In selecting applicants for funding, the department shall make every effort to ensure that [traditional and small] community-based economic development activities and community-based enterprises are distributed throughout the State.”

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

## ACT 193

S.B. NO. 2124

A Bill for an Act Relating to Disposition of Defendants.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 706-669, Hawaii Revised Statutes, is amended by amending subsection (5) to read as follows:

“(5) [The] After sixty days notice to the prosecuting attorney, the authority in its discretion may reduce the minimum term fixed by its order pursuant to subsection (1).”

SECTION 2. Section 706-670, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (1) to read:

“(1) Parole hearing. A person sentenced to an indeterminate term of imprisonment shall receive an initial parole hearing at least one month before the

expiration of the minimum term of imprisonment determined by the Hawaii paroling authority pursuant to section 706-669. If parole is not granted at that time, additional hearings shall be held at twelve-month intervals or less until parole is granted or the maximum period of imprisonment expires. The State shall have the right to be represented at the initial parole hearing and all subsequent parole hearings by the prosecuting attorney, who may present written testimony and make oral comments, and the authority shall consider [such] the testimony and comments in reaching its decision. The authority shall notify the appropriate prosecuting attorney of the hearing at the time the prisoner is given notice of the hearing.”

2. By amending subsection (4) to read:

“(4) Authority’s decision; initial minimum term of parole. The authority shall render its decision regarding a prisoner’s release on parole within a reasonable time after the parole hearing. A grant of parole shall not be subject to acceptance by the prisoner. If the authority denies parole after the hearing, it shall state its reasons in writing. A verbatim stenographic or mechanical record of the parole hearing shall be made and preserved in transcribed or untranscribed form. The authority [may], in its discretion, may order a reconsideration or rehearing of the case at any time[.] and shall provide reasonable notice of the reconsideration or rehearing to the prosecuting attorney. If parole is granted by the authority, the authority shall set the initial minimum length of the parole term.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

## ACT 194

S.B. NO. 2144

A Bill for an Act Relating to Conservation Easements.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 198-1, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§198-1]]~~ **Conservation easement defined.** For the purposes of this chapter, a “conservation easement” is an interest in real property created by deed, restrictions, covenants, or conditions, the purpose of which is to [preserve]:

- (1) Preserve and protect land predominantly in its natural, scenic, forested, or open-space condition[.];
- (2) Preserve and protect the structural integrity and physical appearance of cultural landscapes, resources, and sites which perpetuate indigenous native Hawaiian culture; or
- (3) Preserve and protect historic properties as defined in section 6E-2, and traditional and family cemeteries.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 17, 1996.)



## ACT 195

S.B. NO. 2186

A Bill for an Act Relating to Unauthorized Control of Propelled Vehicles.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The number of automobiles stolen in this state has been rising steadily every year. In 1991, 3,050 motor vehicles were stolen on Oahu. In 1992 and 1993, the figures rose to 3,507 and 4,460, respectively. In 1994, 5,727 thefts of automobiles were committed and preliminary estimates are that over 7,500 vehicles were stolen on Oahu in 1995, more than twice the amount stolen in 1992, and a thirty-three per cent increase over the 1994 figures.

Statistically, automobile thefts on Oahu constitute the large majority of the cases in this state. Of the 3,850 known automobile theft cases in the first six months of 1995, 3,468 occurred on Oahu. With an average insurance claim of \$5,000 per stolen vehicle, the dramatic increase in automobile thefts on Oahu in 1995 had a tremendous economic impact on insurance rates in Hawaii. The 7,500 vehicles estimated to have been stolen in 1995, at an average insurance claim of \$5,000 per vehicle, translates to \$37,500,000 in losses to insurers and ultimately, to consumers.

In light of the escalating number of car thefts and the impact of those thefts statewide, the legislature has decided that a careful examination of the state's present unauthorized control of a propelled vehicle statute is in order.

Under the current unauthorized control of a propelled vehicle law, a defendant caught operating a stolen vehicle may escape conviction if he can prove by a preponderance of the evidence that he reasonably believed that the vehicle's owner would have authorized the use had the owner known of it. "Owner" is presently defined by the law as a person having possession of the property involved, even if that possession is unlawful.

Therefore, even if the police arrest someone driving a stolen vehicle, that person may escape conviction by stating that he or she received permission to use the vehicle from another person and that he or she was unaware that the vehicle had been stolen. Experienced car thieves are aware of this loophole and exploit it to their advantage, telling the police that a person known only to them by a first name and whose whereabouts are presently unknown, gave them permission to use the vehicle.

The purpose of this Act is to amend the affirmative defense provided in section 708-836(3), Hawaii Revised Statutes, and to amend the definition of "owner", for the purposes of this section, to mean the registered owner of the vehicle or the unrecorded registered owner of the vehicle pending transfer of ownership.

SECTION 2. Section 708-836, Hawaii Revised Statutes, is amended to read as follows:

**"§708-836 Unauthorized control of propelled vehicle.** (1) A person commits the offense of unauthorized control of a propelled vehicle if the person intentionally exerts unauthorized control over another's propelled vehicle by operating the vehicle without the owner's consent or by changing the identity of the vehicle without the owner's consent.

(2) "Propelled vehicle" means an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.

(3) It is an affirmative defense to a prosecution under this section that the defendant: [reasonably believed that the owner would have authorized the use had the owner known of it.]

- (a) Received authorization to use the vehicle from an agent of the owner where the agent had actual or apparent authority to authorize such use;  
or
- (b) Is a lien holder or legal owner of the propelled vehicle, or an authorized agent of the lien holder or legal owner, engaged in the lawful repossession of the propelled vehicle.

(4) For the purposes of this section, "owner" means the registered owner of the propelled vehicle or the unrecorded owner of the vehicle pending transfer of ownership.

[(4)] (5) Unauthorized control of a propelled vehicle is a class C felony."

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

## ACT 196

S.B. NO. 2209

A Bill for an Act Relating to the Hawaii State Public Library System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 312, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§312- Reallocation of vacant positions.** The state librarian shall promote innovative, efficient, and effective management, without regard to the position variance requirements of the department of budget and finance, and may:

- (1) Reallocate existing vacant positions throughout the public library system;
- (2) Directly authorize and implement internal reorganization actions; and
- (3) Create temporary positions as necessary; provided that:
  - (A) The expenditures of the public library system shall not exceed its allocated budget;
  - (B) The term of each position shall not exceed one year; and
  - (C) The state librarian shall report the creation of temporary positions to the department of budget and finance."

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval and shall be repealed on June 30, 1999.

(Approved June 17, 1996.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 197

S.B. NO. 2247

A Bill for an Act Relating to Manslaughter.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 706-620, Hawaii Revised Statutes, is amended to read as follows:

**“§706-620 Authority to withhold sentence of imprisonment.** A defendant who has been convicted of a crime may be sentenced to a term of probation unless:

- (1) The crime is first or second degree murder or attempted first or second degree murder;
- (2) The crime is a class A felony, except class A felonies defined in chapter 712, part IV[;], and by section 707-702;
- (3) The defendant is a repeat offender under section 706-606.5;
- (4) The defendant is a felony firearm offender as defined in section 706-660.1(2); or
- (5) The crime involved the death of or the infliction of serious or substantial bodily injury upon a child, an elder person, or a handicapped person under section 706-660.2.”

SECTION 2. Section 707-702, Hawaii Revised Statutes, is amended to read as follows:

**“§707-702 Manslaughter.** (1) A person commits the offense of manslaughter if:

- (a) He recklessly causes the death of another person; or
- (b) He intentionally causes another person to commit suicide.

(2) In a prosecution for murder in the first and second degrees it is a defense, which reduces the offense to manslaughter, that the defendant was, at the time he caused the death of the other person, under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation. The reasonableness of the explanation shall be determined from the viewpoint of a person in the defendant's situation under the circumstances as he believed them to be.

- (3) Manslaughter is a class [B] A felony.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

A Bill for an Act Relating to Family Violence.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the problems of family violence do not necessarily cease when the victimized family is legally separated or divorced. In fact, the violence often escalates, and child custody and visitation become the new forum for the continuation of the abuse. Because current laws relative to child custody and visitation are based on an assumption that even divorcing parents are in relatively equal positions of power and that such parents will act in the children's best interest, these laws often work against the protection of the children and the abused spouse in families with a history of family violence. Consequently, laws designed to act in the children's best interest may actually effect a contrary result due to the unique dynamics of family violence.

SECTION 2. Section 571-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Family violence” means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:

- (1) Attempting to cause or causing physical harm to another family or household member;
- (2) Placing a family or household member in fear of physical harm; or
- (3) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.”

SECTION 3. Section 571-46, Hawaii Revised Statutes, is amended to read as follows:

**“§571-46 Criteria and procedure in awarding custody[,] and visitation.**

In the actions for divorce, separation, annulment, separate maintenance, or any other proceeding where there is at issue a dispute as to the custody of a minor child, the court, during the pendency of the action, at the final hearing, or any time during the minority of the child, may make an order for the custody of the minor child as may seem necessary or proper. In awarding the custody, the court shall be guided by the following standards, considerations, and procedures:

- (1) Custody should be awarded to either parent or to both parents according to the best interests of the child;
- (2) Custody may be awarded to persons other than the father or mother whenever the award serves the best interest of the child. Any person who has had de facto custody of the child in a stable and wholesome home and is a fit and proper person shall be entitled prima facie to an award of custody;
- (3) If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, the child's wishes as to custody shall be considered and be given due weight by the court;
- (4) Whenever good cause appears therefor, the court may require an investigation and report concerning the care, welfare, and custody of any minor child of the parties. When so directed by the court, investigators or professional personnel attached to or assisting the court shall make investigations and reports which shall be made available to all interested parties and counsel before hearing, and the reports may be received

in evidence if no objection is made and, if objection is made, may be received in evidence provided the person or persons responsible for the report are available for cross-examination as to any matter that has been investigated;

- (5) The court may hear the testimony of any person or expert produced by any party or upon the court's own motion, whose skill, insight, knowledge, or experience is such that the person's or expert's testimony is relevant to a just and reasonable determination of what is for the best physical, mental, moral, and spiritual well-being of the child whose custody is at issue;
- (6) Any custody award shall be subject to modification or change whenever the best interests of the child require or justify the modification or change and, wherever practicable, the same person who made the original order shall hear the motion or petition for modification of the prior award;
- (7) Reasonable visitation rights shall be awarded to parents, grandparents, and any person interested in the welfare of the child in the discretion of the court, unless it is shown that rights of visitation are detrimental to the best interests of the child;
- (8) The court may appoint a guardian ad litem to represent the interests of the child and may assess the reasonable fees and expenses of the guardian ad litem as costs of the action, payable in whole or in part by either or both parties as the circumstances may justify; [and
- (9) The court shall consider evidence of family violence, including but not limited to spouse abuse, the determination regarding who was the primary aggressor, and the frequency and degree of family violence as factors in determining the best interests of the child in establishing custody and visitation rights. If custody is given to a person against whom there is evidence of family violence, the court shall include, in its written order, the reasons for the decision. If there is evidence of family violence, an award of joint custody or any grant of visitation shall be arranged so as to best protect the child and the abused parent from further harm.]
- (9) In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that family violence has been committed by a parent raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of family violence. In addition to other factors that a court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue, and in which the court has made a finding of family violence by a parent:
  - (A) The court shall consider as primary the safety and well-being of the child and of the parent who is the victim of family violence;
  - (B) The court shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person; and
  - (C) If a parent is absent or relocates because of an act of family violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation;
- (10) A court may award visitation to a parent who committed family violence only if the court finds that adequate provision for the safety of the child and the parent who is a victim of family violence can be made;

- (11) In a visitation order, a court may:
  - (A) Order an exchange of a child to occur in a protected setting;
  - (B) Order visitation supervised by another person or agency;
  - (C) Order the perpetrator of family violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;
  - (D) Order the perpetrator of family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four hours preceding the visitation;
  - (E) Order the perpetrator of family violence to pay a fee to defray the costs of supervised visitation;
  - (F) Prohibit overnight visitation;
  - (G) Require a bond from the perpetrator of family violence for the return and safety of the child. In determining the amount of the bond, the court shall consider the financial circumstances of the perpetrator of family violence;
  - (H) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family violence, or other family or household member; and
  - (I) Order the address of the child and the victim to be kept confidential.
- (12) The court may refer but shall not order an adult who is a victim of family violence to attend counseling relating to the victim's status or behavior as a victim, individually or with the perpetrator of family violence, as a condition of receiving custody of a child or as a condition of visitation;
- (13) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation; and
- (14) A supervised visitation center must provide a secure setting and specialized procedures for supervised visitation and the transfer of children for visitation, and provide supervision by a person trained in security and the avoidance of family violence."

SECTION 4. Section 580-41.5, Hawaii Revised Statutes, is amended to read as follows:

**"[~~§~~580-41.5] Battered spouses; exemption from mediation in divorce proceedings.** (a) In contested divorce proceedings [involving] where there are allegations of spousal abuse, the court [may excuse] shall not require a party [from participating] alleging the spousal abuse to participate in any component of any mediation program[, if the court determines that it is in the best interest of the party to be excused.] against the wishes of that party.

(b) A mediator who receives a referral or order from a court to conduct mediation shall screen for the occurrence of family violence between the parties. A mediator shall not engage in mediation when it appears to the mediator or when either party asserts that family violence has occurred unless:

- (1) Mediation is authorized by the victim of the alleged family violence;
- (2) Mediation is provided in a specialized manner that protects the safety of the victim by a mediator who is trained in family violence; and
- (3) The victim is permitted to have in attendance at mediation, a supporting person of the victim's choice including but not limited to an attorney or advocate. If the victim chooses to exercise such option, any other party to the mediation will be permitted to have in attendance at mediation, a

supporting person of the party's choice including but not limited to an attorney or advocate.

(c) In a proceeding concerning the custody or visitation of a child, if a protective order is in effect, the court shall not require a party alleging family violence to participate in any component of any mediation program against the wishes of that party.

(d) In a proceeding concerning the custody or visitation of a child, if there is an allegation of family violence and a protective order is not in effect, the court may order mediation or refer either party to mediation only if:

- (1) Mediation is authorized by the victim of the alleged family violence;
- (2) Mediation is provided in a specialized manner that protects the safety of the victim by a mediator who is trained in family violence; and
- (3) The victim is permitted to have in attendance at mediation, a supporting person of the victim's choice including but not limited to an attorney or advocate. If the victim chooses to exercise such option, any other party to the mediation will be permitted to have in attendance at mediation, a supporting person of the party's choice including but not limited to an attorney or advocate."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

## ACT 199

S.B. NO. 2249

A Bill for an Act Relating to Domestic Abuse Protective Orders.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 586-5.5, Hawaii Revised Statutes, is amended to read as follows:

**“§586-5.5 Protective order[.]; additional orders.** (a) If after hearing all relevant evidence, the court finds that the respondent has failed to show cause why the order should not be continued and that a protective order is necessary to prevent domestic abuse or a recurrence of abuse, the court may order that a protective order be issued for such further period as the court deems appropriate, not to exceed three years from the date the protective order is granted. [However, the court may terminate the protective order at any time with the mutual consent of the parties.]

The protective order may include all orders stated in the temporary restraining order and may provide such further relief as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation and custody with regard to minor children of the parties and orders to either or both parties to participate in treatment or counseling services. If the court finds that the party meets the requirements under section 334-59(a)(2), the court may

further order that the party be taken to the nearest facility for emergency examination and treatment.

(b) A protective order which was granted for a period less than three years may be extended for a period not to exceed three years from the date the original protective order was granted. Upon application by a person or agency capable of petitioning under section 586-3, the court shall hold a hearing to determine whether the protective order should be extended. In making a determination, the court shall consider evidence of abuse and threats of abuse that occurred prior to the initial restraining order and whether good cause exists to extend the protective order.

The protective order may include all orders stated in the temporary restraining order and may provide such further relief as the court deems necessary to prevent domestic abuse or a recurrence of abuse, including orders establishing temporary visitation and custody with regard to minor children of the parties and orders to either or both parties to participate in treatment or counseling services. The court may extend or terminate the protective order at any time with the mutual consent of the parties."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

## ACT 200

S.B. NO. 2322

A Bill for an Act Relating to Firearms.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the processing of applications for permits to acquire firearms, which includes an extensive background investigation conducted on each applicant, is a cost-intensive responsibility currently being absorbed by the State's taxpayers. Local verifications alone conducted by the Honolulu police department require the services of three full-time investigators and four clerks, and approximately eight hundred permit applications are processed monthly by the Honolulu police department, with each application necessitating an average of one hour and forty-five minutes to complete. The legislature also finds that the processing of such applications has become increasingly expensive, putting a burden on the already overwhelmed budgets of the county police departments. The Honolulu police department estimates the direct cost of fingerprinting and related costs to be \$225,000 annually. Moreover, since October 1994, the Federal Bureau of Investigation has been charging the Honolulu police department a processing fee of \$24 for each fingerprint analysis, which is required for every applicant. The legislature notes that the majority of other states require a fee of applicants to cover firearms permit processing costs. Thus, the legislature finds and declares that it is eminently appropriate, especially in view of the State's current fiscal crisis, that applicants for permits to acquire firearms support the costs of processing the permits, as opposed to the taxpayers.

The legislature further finds that such permit applications are necessary under the State's power to protect the public health, safety, and welfare. Furthermore, the legislature notes that a complete reading of the Proceedings of the 1950 Constitutional Convention (pp. 10-15), regarding the adoption of section 15 of



article I of the state constitution, clearly indicates that it was the intent of the 1950 constitutional convention to allow the legislature to impose reasonable restrictions, including even the absolute prohibition of certain types of lethal weapons, on the "right to keep and bear arms." Therefore, the legislature further finds and declares that a fee imposed upon applicants for permits to acquire firearms is a reasonable regulation of firearms and is necessary to protect the public's health, safety, and welfare.

Accordingly, this Act is intended to impose a reasonable fee upon permits to acquire firearms to offset the cost to the county police departments for the processing of the permit applications.

Furthermore, the legislature finds that where both spouses enjoy sports involving handguns, each of them must register their own handguns. The law currently makes it a misdemeanor to possess a handgun belonging to another, even with the consent of the owner, except for the actual time that the borrower is engaged in target shooting at the target range. This increases the number of handguns out in the community.

Therefore, this Act is also intended to permit spouses to jointly register firearms.

SECTION 2. Section 134-2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The chief of police of the respective counties may issue permits to acquire firearms to citizens of the United States of the age of twenty-one years or more, or duly accredited official representatives of foreign nations, or duly commissioned law enforcement officers of the State who are aliens; provided that any law enforcement officer who is the owner of a firearm and who is an alien shall transfer ownership of the firearm within forty-eight hours after termination of employment from a law enforcement agency. The chief of police of each county may issue permits to aliens of the age of eighteen years or more for use of rifles and shotguns for a period not exceeding sixty days, upon a showing that the alien has first procured a hunting license under chapter 183D, part II. The chief of police of each county may issue permits to aliens of the age of twenty-one years or more for use of firearms for a period not exceeding six months, upon a showing that the alien is in training for a specific organized sport-shooting contest to be held within the permit period. The attorney general shall adopt rules, pursuant to chapter 91, as to what constitutes sufficient evidence that an alien is in training for a sport-shooting contest. Notwithstanding any provision of the law to the contrary and upon joint application, the chief of police may issue permits to acquire firearms jointly to spouses who otherwise qualify to obtain permits under this section.”

SECTION 3. Section 134-2, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

“(i) No fee shall be charged for permits, or applications for permits, under this section[.], except for a single fee chargeable by and payable to the issuing county, for individuals applying for their first permit, in an amount equal to the fee actually charged by the Federal Bureau of Investigation to the issuing police department for a fingerprint check in connection with that application or permit. In the case of a joint application, the fee provided for in this section may be charged to each person to whom no previous permit has been issued.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 1996.

(Approved June 17, 1996.)

ACT 201

S.B. NO. 2326

A Bill for an Act Relating to Domestic Violence.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 134, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§134- Seizure of firearms in domestic abuse situations; requirements; return of.** (a) Any police officer who has reasonable grounds to believe that a person has recently assaulted or threatened to assault a family or household member may seize all firearms and ammunition that the police officer has reasonable grounds to believe were used or threatened to be used in the commission of the offense. The police officer may seize any firearms or ammunition that are in plain view of the officer or were discovered pursuant to a consensual search, as necessary for the protection of the officer or any family or household member. Firearms seized under this section shall be taken to the appropriate county police department for safekeeping or as evidence.

(b) Upon taking possession of a firearm or ammunition, the officer shall give the owner or person who was in lawful possession of the firearm or ammunition a receipt identifying the firearm or ammunition and indicating where the firearm or ammunition can be recovered.

(c) The officer taking possession of the firearm or ammunition shall notify the person against whom the alleged assault or threatened assault was inflicted of remedies and services available to victims of domestic violence, including the right to apply for a domestic abuse restraining order.

(d) The firearm or ammunition shall be made available to the owner or person who was in lawful possession of the firearm or ammunition within seven working days after the seizure when:

- (1) The firearm or ammunition are not retained for use as evidence;
- (2) The firearm or ammunition are not retained because they are possessed illegally;
- (3) The owner or person who has lawful possession of the firearm or ammunition is not restrained by an order of any court from possessing a firearm or ammunition; and
- (4) No criminal charges are pending against the owner or person who has lawful possession of the firearm or ammunition when a restraining order has already issued.”

SECTION 2. Section 709-906, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

“(4) Any police officer, with or without a warrant, may take the following course of action where the officer has reasonable grounds to believe that there was recent physical abuse or harm inflicted by one person upon a family or household member, whether or not such physical abuse or harm occurred in the officer’s presence:

- (a) The police officer may make reasonable inquiry of the family or household member upon whom the officer believes recent physical abuse or harm has been inflicted and other witnesses as there may be;
- (b) Where the police officer has reasonable grounds to believe that there is probable danger of further physical abuse or harm being inflicted by one person upon a family or household member, the police officer may lawfully order the person to leave the premises for a cooling off period of twenty-four hours; provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects;
- (c) Where the police officer makes the finding referred to in [[paragraph]] (b) and the incident occurs after 12:00 p.m. on any Friday, or on any Saturday, Sunday or legal holiday, the order to leave the premises shall commence immediately and be in full force but the twenty-four hour period shall be enlarged and extended until 4:30 p.m. on the first day following the weekend or legal holiday;
- (d) All persons who are ordered to leave as stated above shall be given a written warning citation stating the date, time, and location of the warning and stating the penalties for violating the warning. A copy of the warning citation shall be retained by the police officer and attached to a written report which shall be submitted in all cases. A third copy of the warning citation shall be given to the abused person; and
- (e) If the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of the cooling off period, the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the family or household member[.]; and
- (f) The police officer may seize all firearms and ammunition that the police officer has reasonable grounds to believe were used or threatened to be used in the commission of an offense under this section."

SECTION 3. Section 853-4, Hawaii Revised Statutes, is amended to read as follows:

**“§853-4 Chapter not applicable; when.** This chapter shall not apply when:

- (1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;
- (2) The offense charged is a felony which involves the intentional, knowing, or reckless bodily injury or serious bodily injury of another person, or is a misdemeanor or petty misdemeanor which carries a mandatory minimum sentence and which involves the intentional, knowing, or reckless bodily injury or serious bodily injury of another person;
- (3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
- (4) The offense charged is a class A felony;
- (5) The offense charged is nonprobationable;
- (6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct which if perpetrated in this State would be punishable as a felony;
- (7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct which if perpetrated in this State would constitute a felony;

- (8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;
- (9) A firearm was used in the commission of the offense charged;
- (10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;
- (11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea status for a prior offense, whether or not the period of deferral has already expired;
- (12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;
- (13) The offense charged is:
  - (A) Escape in the first degree;
  - (B) Escape in the second degree;
  - (C) Promoting prison contraband in the first degree;
  - (D) Promoting prison contraband in the second degree;
  - (E) Bail jumping in the first degree;
  - (F) Bail jumping in the second degree;
  - (G) Bribery;
  - (H) Bribery of a witness;
  - (I) Intimidating a witness;
  - (J) Bribery of or by a juror;
  - (K) Intimidating a juror;
  - (L) Jury tampering;
  - (M) Promoting prostitution in the first degree;
  - (N) Promoting prostitution in the second degree;
  - (O) Promoting prostitution in the third degree[.];
  - (P) Abuse of family and household members.

The court may by rule adopt other criteria in this area.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. This Act shall take effect on July 1, 1996.

(Approved June 17, 1996.)

**Note**

- 1. Edited pursuant to HRS §23G-16.5.

**ACT 202**

S.B. NO. 2329

A Bill for an Act Relating to Professional and Vocational Regulatory Programs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

**“§26H-4 Repeal dates for newly enacted professional and vocational regulatory programs.** (a) Any professional or vocational regulatory program enacted after [July] January 1, 1994[,] and listed in this section shall be repealed [at the end of the third full calendar year following the program’s enactment.] on the date indicated in subsection (b). The auditor shall perform an evaluation of the program, pursuant to section 26H-5, prior to its repeal date.

(b) Chapter 467E (Social Workers) shall be repealed on December 31, 2000.”

SECTION 2. Section 304-66.2, Hawaii Revised Statutes, is amended to read as follows:

**“§304-66.2 Qualifications for residency program.** The school of medicine of the University of Hawaii shall recommend that two positions within the University of Hawaii medical residency program be filled each year commencing in 1987, in accordance with this subpart, by persons who have the necessary qualifications, other than the qualification of residency training, to take the examination for licensure as physicians under chapter 453[,] or 460, and who volunteer to enter into contracts under section 304-66.3, whether or not they are graduates of the school of medicine of the University of Hawaii. The department of public safety and the department of health shall notify the school of medicine of the type of physicians needed by the correctional facilities and by rural communities. The school of medicine shall establish procedures to provide for applications by, and selection of, persons who are qualified and interested to fill the positions.”

SECTION 3. Section 304-66.3, Hawaii Revised Statutes, is amended to read as follows:

**“[[§304-66.3]] Contract necessary for filling of positions.** In order to fill a position under this subpart, a person shall enter into a contract with the school of medicine stating that the person:

- (1) Agrees to participate in the residency program for the minimum period required to qualify for the licensure examination under chapter 453[;] or 460;
- (2) Agrees to obtain a permanent license to practice medicine under chapter 453[,] or 460, as soon as possible following termination of participation in the residency program;
- (3) Agrees to serve for two years as:
  - (A) An officer or employee of the department of public safety who is based in a correctional facility and whose normal course of duty requires medical treatment of inmates of the facility, another correctional facility, or both; or
  - (B) An officer or employee of the department of health who is employed to provide primary medical care to residents of and be based in a rural community with a shortage of physicians; and
- (4) Agrees to commence fulfilling the requirement under paragraph (3) immediately following the termination of participation in the residency program and licensure.”

SECTION 4. Section 304-66.4, Hawaii Revised Statutes, is amended to read as follows:

**“§304-66.4 Penalty for breach of contract.** A person who is placed in the residency program under this subpart, but who breaches any term of the contract

under section 304-66.3, shall pay to the State damages of \$10,000; provided that a contract shall not be deemed breached if the person has obtained a permanent license to practice medicine under chapter 453[,] or 460, but could not fulfill the requirements of section 304-66.3(3) and (4) because no employment vacancy existed in the correctional facilities of the department of public safety or no shortage of physicians existed in any rural community and the department of public safety or department of health, as applicable, certifies that no employment vacancy or shortage existed.”

SECTION 5. Section 304-66.5, Hawaii Revised Statutes, is amended to read as follows:

“**[[§304-66.5]] Residency program; defined.** For the purpose of this subpart, “residency program” means a graduate medical education program in a hospital in this State which is accredited as a medical school residency program by the school of medicine of the University of Hawaii. The school of medicine may develop a special residency program for the purpose of this subpart; provided that the program, upon completion by the person, qualifies the person to take the licensure examination under chapter 453[,] or 460.”

SECTION 6. Section 321-373, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department shall adopt rules under chapter 91 to implement this part. The rules shall include but not be limited to:

- (1) Prohibiting the use of injections, unless administered by a physician licensed under chapter 453 or 460, or by a registered nurse licensed under chapter 457;
- (2) Appropriate restrictions on topical anesthetics;
- (3) Prescribing procedures and conditions for sterilization, storage of sterilized equipment, resterilization, and disposal of discarded needles and other equipment;
- (4) Creating examination standards; and
- (5) Fixing penalties and fines for violations of this part or any of the rules adopted by the department.”

SECTION 7. Section 321-374, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Physicians holding a valid unrevoked license under chapter 453 or 460 are exempt from the requirements of this part.”

SECTION 8. Section 321-376, Hawaii Revised Statutes, is amended to read as follows:

“**[[§321-376]] Facial tattoos.** Application of facial tattoos shall be prohibited except by a physician licensed under chapter 453 or 460, or by a tattoo artist who is under the general supervision of such a physician.”

SECTION 9. Section 321-392, Hawaii Revised Statutes, is amended by amending the definition of “physician” to read as follows:

““Physician” means a person licensed to practice medicine as authorized in chapter 453[,] or 460.”

SECTION 10. Section 435E-1, Hawaii Revised Statutes, is amended by amending the definition of “physician or surgeon” to read as follows:

““Physician” or “surgeon” means any person licensed under chapter 453[.] or 460; or any professional corporation, partnership, or other entity whose stockholders or partners are comprised solely of persons licensed under chapter 453[.] or 460.”

SECTION 11. Section 461-1, Hawaii Revised Statutes, is amended by amending the definition of “practice of pharmacy” to read as follows:

““Practice of pharmacy” means the interpretation and evaluation of prescription orders; the compounding, dispensing, and labeling of drugs and devices (except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially legend drugs and devices); the participation in drug selection and drug utilization reviews; the proper and safe storage of drugs and devices and the maintenance of proper records therefor; the responsibility for advising when necessary or where regulated, of therapeutic values, content, hazards, and use of drugs and devices; performing the following procedures or functions in a licensed acute care hospital in accordance with policies, procedures, or protocols developed by health professionals, including physicians and surgeons, pharmacists, and registered nurses, with the concurrence of the facility administrator: ordering or performing routine drug therapy related patient assessment procedures including temperature, pulse, and respiration; ordering drug therapy related laboratory tests; administering drugs and biologicals by injection pursuant to a licensed medical doctor’s order; and adjusting the dosage of a patient’s drug regimen pursuant to a licensed medical doctor’s or osteopathic physician’s order or authorization; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy. Licensed acute care hospital means an acute care hospital licensed by the department of health pursuant to chapter 321. Licensed medical doctor means a medical doctor licensed by the board of medical examiners pursuant to chapter 453[.] or the board of osteopathic examiners under chapter 460.”

SECTION 12. Section 466J-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board shall consist of ten members. The membership shall be composed of:

- (1) Two persons licensed to practice medicine pursuant to chapter 453 or 460 and certified by the American Board of Radiology;
- (2) Four persons, each with at least five years’ experience and certified in the practice of radiography, two of whom shall be persons engaged in the hospital practice of radiography;
- (3) One person with at least five years’ experience who is certified and engaged in the practice of radiation therapy technology;
- (4) One person with at least five years’ experience, who is certified and engaged in the practice of nuclear medicine technology;
- (5) One person from the general public; and
- (6) The director or the director’s designated representative shall be the tenth, ex officio voting member of the board.”

SECTION 13. Section 467E-7, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§467E-7]]~~ **Licensing requirements.** In addition to the licensing requirements provided by section 436B-11, the director shall consider the following as minimum evidence that an applicant is qualified to be licensed:

- (1) The applicant holds a master's degree from [an accredited] a college or university in a social work program accredited by or deemed to be equivalent to an accredited program by the Council on Social Work Education or a doctoral degree accredited by the Western Association of Schools and Colleges or a comparable regional accreditation body; and
- (2) The applicant has passed the national examination given by the American Association of State Social Work Boards.”

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 15. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

## ACT 203

S.B. NO. 2401

A Bill for an Act Relating to Information Technology.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that currently available computer network capabilities, such as enhanced internet-based services, together with highly developed computer-based encryption systems, such as digital signature technology, provide cost-efficient means of systematically producing, signing, transmitting, and filing electronic documents with speed and reliability equal to or surpassing that of current paper-based systems.

In this age of electronic commerce, data transmission and identification integrity and security are of critical concern not only to businesses such as financial institutions, which utilize and provide electronic funds transfers, but also to government agencies that have recognized the value of deploying computer-based systems for filing and retrieving official public records and documents.

For example, the state judiciary estimates that the implementation of a secure and reliable electronic public document filing program would significantly reduce the cost of administering the court system, while enhancing system efficiency. However, the computer systems of the courts are inadequate to accept this new technology. What is required is an upgraded statewide automated system to enable greater efficiency in serving the public through such innovations as electronic filing.

The purpose of this Act is to establish a computer special fund to enable the judiciary to upgrade its computer system. This would then enable the judiciary to explore development of a pilot project to increase its efficiency, productivity, and accessibility by computer-based digital and electronic document filings.

SECTION 2. Chapter 601, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§601- Judiciary computer system special fund.** (a) There is established in the state treasury a special fund to be known as the judiciary computer



system special fund. Moneys collected from administrative fees pursuant to section 287-3(a) shall be deposited into the fund.

(b) The fund shall be used for:

- (1) Consulting and other related fees and expenses in the selection, implementation, programming, and subsequent upgrades in judiciary computer system for a statewide computer system; and
- (2) The purchase of hardware and related software for a judiciary computer system.

(c) The fund may be used for other expenses relating to new technology in traffic enforcement and civil, criminal, and appellate case processing and management, including operations and maintenance.

(d) Moneys in the judiciary computer system special fund shall not revert to the general fund."

SECTION 3. Section 287-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The traffic violations bureaus of the district courts, upon request, shall furnish any person a certified abstract of the bureaus' record, if any, of any person relating to all alleged moving violations[, as well as] and any convictions resulting therefrom, arising from the operation of a motor vehicle and any administrative license revocation pursuant to chapter 286, part XIV. The traffic violations bureaus may collect a fee, [to be a realization of the general fund, of not in excess of \$5 for any such certificate.] not to exceed \$7, of which \$5 shall be deposited into the general fund and \$2 shall be deposited into the judiciary computer system special fund."

SECTION 4. The judiciary shall convene a task force in consultation with the department of commerce and consumer affairs and other interested parties in the State to explore a program for computer based digital and electronic filing of court documents.

SECTION 5. The judiciary may adopt temporary rules not subject to chapter 91, Hawaii Revised Statutes, to effectuate the purposes of this Act.

SECTION 6. The judiciary and the department of commerce and consumer affairs shall submit a joint report to the legislature on an annual basis regarding the status and results of the program. The legislature may require such further reports as it deems necessary.

SECTION 7. There is appropriated out of the judiciary computer system special fund the sum of \$800,000 or so much thereof as may be necessary for fiscal year 1996-1997 to carry out the purposes of this Act. The sum appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 9. This Act shall take effect on July 1, 1996; provided that on June 30, 2000, this Act shall be repealed, and section 3 of this Act shall be reenacted in the form in which it read on the day before the approval of this Act.

(Approved June 17, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 204

S.B. NO. 2402

A Bill for an Act Relating to the Authorization of Special Purpose Revenue Bonds for Energy Development.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds and refunding special purpose revenue bonds under this Act will assist the utilities providing electric service to the general public to obtain lower interest rate bond financing for capital improvement projects, through the use of tax exempt special purpose revenue bonds and refunding bonds. This savings in interest cost would be reflected in the electric rates established by the public utilities commission in rate case proceedings. Ratepayers pay for the cost of financing as part of the rates set by the public utilities commission. Therefore, the entire savings resulting from the reduction in capital costs will benefit the ratepayers. Furthermore, these bonds cannot be secured directly or indirectly by the general credit of the counties or the revenues or taxes of the State but rather solely by the utilities. Thus, the cost of financing necessary capital improvements can be decreased without cost or risk to the State. For the foregoing reasons, the legislature finds and declares that the issuance under this Act of special purpose revenue bonds and refunding special purpose revenue bonds is in the public interest and for the public health, safety, and general welfare of the State. The legislature further finds that Hawaiian Electric Company, Inc., and Maui Electric Company, Limited, are electric utilities serving the general public and qualify for special purpose revenue bonds pursuant to chapter 39A, part VI, Hawaii Revised Statutes.

SECTION 2. The department of budget and finance, with the approval of the governor is authorized to issue special purpose revenue bonds in one or more series in a total amount not to exceed \$150,000,000 for the following capital improvement programs which are multi-project programs for the local furnishing of electric energy by electric utilities serving the general public.

<u>Company</u>	<u>Amount of Authorization</u>
Hawaiian Electric Company, Inc. (Oahu) Multi-project capital improvement program, including the acquisition of land, power plant additions, transmission and distribution lines, substations, and other electric systems and facilities, or any combination thereof, for the financing of which special purpose revenue bonds will be issued during the period from July 1, 1996, through December 31, 1999	\$115,000,000
Maui Electric Company, Limited Multi-project capital improvement program, including the acquisition of land, generating facilities (including one new fossil fuel generating unit on the island of Maui, two new fossil fuel generating units on the island of Lanai, and three new fossil fuel generating units on the island of Molokai), power plant additions, transmission and distribution lines, substations, and other electric systems and facilities, or any combination thereof, for the financing of which special purpose revenue bonds will be issued during the period from July 1, 1996, through December 31, 1999	\$ 35,000,000

provided that public utilities commission approval shall be required for any project financed by the issuance of special purpose revenue bonds under this Act; and provided further that, of the amount authorized in this section, none shall be used for nuclear fuel generating units.

SECTION 3. Under this Act, the public utilities commission shall report annually to the legislature as to the progress in reducing financing costs of electric utilities, including the cost of the bonds at the time of issue as compared to the cost to the utility if the issue was made on other than under the revenue bond provision, and the estimated benefits derived from the use of the special purpose revenue bonds.

SECTION 4. The department of budget and finance is authorized to issue from time to time, including times subsequent to December 31, 1999, refunding special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2, and any refunding special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption, and the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department of budget and finance shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to chapter 39A,

part VI, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds and refunding special purpose revenue bonds to assist utilities serving the general public in providing electric energy.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on December 31, 1999.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

## ACT 205

S.B. NO. 2405

A Bill for an Act Relating to Net Energy Metering.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that a program to provide net energy metering for eligible customer-generators is one way to encourage private investment in renewable energy resources, stimulate in-state economic growth, enhance the continued diversification of Hawaii's energy resource mix, and reduce utility interconnect and administrative costs.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§269- Net energy metering.** (a) Every electric utility in the State that offers residential electrical service shall develop a standard contract or tariff providing for net energy metering, and shall make this contract available to eligible customer-generators on a first-come, first-served basis until such time as the total rated generated capacity owned and operated by eligible customer-generators in each utility's service areas equals 0.1 per cent of the utility's peak demand.

(b) Each eligible customer-generator meeting the criteria of subsection (a) shall be entitled to net energy metering, calculated as follows:

(1) The customer-generator shall be billed for the energy supplied by the utility at the utility-approved retail rate, less an amount equal to the amount of energy generated by the customer over the applicable billing period, multiplied by a rate set by the commission based on the incremental cost to the utility of alternative electric energy.

(2) Where the amount in paragraph (1) is positive, the customer-generator shall be billed by the utility. Where the amount is negative, the customer-generator shall be credited by the utility.

(c) A utility, with the consent of the eligible customer-generator, may annualize the period during which the net energy measurement is calculated.

(d) In the event of disputes between a utility and an eligible customer-generator, either party may request a determination of the disputed issue by the commission.

(e) The electric utility shall have the right to deny interconnection with an eligible customer-generator if the interconnection will directly result in degradation of service.

(f) The electric utility shall have the right to prevent electric energy flow into the system by the customer-generator if the customer-generator's facilities are not in compliance with the electric utility's interconnection requirements. The intercon-

nection will be reinstated upon remediation by the customer-generator within a reasonable period. Repeated violations within a one-year period may be grounds for termination of the interconnection agreement.”

SECTION 3. Section 269-1, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

“‘Eligible customer-generator’ means a metered residential customer of an electric utility who owns and operates a solar, wind, or micro-hydro electric energy generating facility with a capacity of not more than ten kilowatts, that is located on the customer’s premises, operates in parallel with the utility’s transmission and distribution facilities, is in conformance with the utility’s interconnection requirements, and is intended primarily to offset part or all of the customer’s own electrical requirements.

“‘Incremental cost of alternative electric energy’ means, with respect to electric energy purchased from an eligible customer-generator, the cost to the utility of the electric energy that, but for the purchase from the eligible customer-generator, the utility would generate or purchase from another non-firm source.

“‘Net energy metering’ means using a non-time-differentiated meter to measure the electricity supplied by a utility and another non-time-differentiated meter to measure the electricity generated by an eligible customer-generator and fed back to the utility over an entire billing period.”

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 206**

S.B. NO. 2416

A Bill for an Act Relating to Controlled Substances.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 329-32, Hawaii Revised Statutes, is amended to read as follows:

“**§329-32 Registration requirements.** (a) Every person who [manufactures,];

- (1) Manufactures, distributes, prescribes, or dispenses any controlled substance within this State [or who proposes];
- (2) Proposes to engage in the manufacture, distribution, prescription, or dispensing of any controlled substance within this State[, or who dispenses]; or
- (3) Dispenses or proposes to dispense any controlled substance for use in this State by shipping, mailing, or otherwise delivering the controlled substance from a location [out of] outside this State[, must];

shall obtain a registration issued by the department of public safety in accordance with [its] the department’s rules. A licensed or registered health care professional [acting] who acts as the authorized agent of a practitioner and who administers

controlled substances at the direction of [a] the practitioner [is], shall not be required to obtain a registration.

(b) Persons registered by the department of public safety under this chapter to manufacture, distribute, prescribe, dispense, store, or conduct research with controlled substances may possess, manufacture, distribute, prescribe, dispense, store, or conduct research with those substances to the extent authorized by their registration and in conformity with [the other provisions of] this part.

(c) Except as otherwise provided[,] by law, the following persons [need] shall not be required to register and may lawfully possess controlled substances under this chapter:

- (1) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance, if the agent or employee is acting in the usual course of the agent's or employee's business or employment;
- (2) A common or contract carrier or [warehouseman,] warehouse, or an employee thereof, whose possession of any controlled substance is in the usual course of the person's business or employment; and
- (3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner [or in lawful possession of a Schedule V substance].

(d) The department of public safety, by rule, may waive [by rule] the [requirement for] registration or filing [of] requirement for certain manufacturers, distributors, prescribers, or dispensers if [it]:

- (1) It is consistent with the public health and safety; and [if the]
- (2) The department of public safety states the specific reasons for [such] the waiver and the time period for which [it] the waiver is to be valid.

(e) A separate registration [is] shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, prescribes, or dispenses controlled substances.

(f) The department of public safety may inspect the establishment of a registrant or applicant for registration in accordance with the department's rule.

(g) The department of public safety may require a registrant to submit such documents or written statements of fact relevant to a registration as the department deems necessary to determine whether the registration should be granted or denied. The failure of the registrant to provide the documents or statements within a reasonable time after being requested to do so shall be deemed to be a waiver by the registrant of the opportunity to present the documents or statements for consideration by the department in granting or denying the registration."

SECTION 2. Section 329-38, Hawaii Revised Statutes, is amended by amending subsections (c), (d), (e), (f), and (g) to read as follows:

“(c) No controlled substance in Schedule III [or], IV, or V may be dispensed without a written or oral prescription of a practitioner, except when a controlled substance is dispensed directly by a practitioner, other than a pharmacist, to an ultimate user. The practitioner, in dispensing a controlled substance in Schedule III [and], IV, or V, shall affix to the package a label showing [the]:

- (1) The date of dispensing[, the];
- (2) The name, strength, and quantity issued of the drug[, the];
- (3) The dispensing practitioner's name and business address[, the];
- (4) The name of the patient[, the];
- (5) The date the potency of the drug expires if that date is available from the manufacturer or the principal labeler[, directions];
- (6) Directions for use[,]; and [cautionary]

- (7) Cautionary statements, if any, contained in the prescription or as required by law.

A complete and accurate record of all Schedule III, IV, and V controlled substances administered, prescribed, and dispensed shall be maintained for two years. Prescriptions and records of dispensing shall [otherwise] be retained in conformance with the requirements of section 329-36[.] unless otherwise provided by law. Prescriptions may not be filled or refilled more than three months after the date [thereof] of the prescription or be refilled more than two times after the date of the prescription, unless the prescription is renewed by the practitioner.

[(d) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(e)] (d) The effectiveness of a prescription for the purposes of this section shall be determined as follows:

- (1) A prescription for a controlled substance [to be effective must] shall be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of [his] the practitioner's professional practice. The responsibility for the proper prescribing and dispensing of controlled substances [is] shall be upon the prescribing practitioner, but a corresponding responsibility [rests] shall rest with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or [in] for legitimate and authorized research [is] shall not be deemed a prescription within the meaning and intent of this section, and the person who knowingly [filling] fills such a purported prescription, as well as the person [issuing it,] who issues the prescription, shall be subject to the penalties provided for violations of [the provisions of the law relating to controlled substances;] this chapter;
- (2) A prescription may not be issued [in order for] to allow an individual practitioner to obtain controlled substances for supplying the individual practitioner for the purpose of general dispensing to patients;
- (3) A prescription may not be issued for the dispensing of narcotic drugs listed in any schedule for the purpose of "detoxification treatment" or "maintenance treatment"; and
- (4) An individual practitioner may not prescribe or dispense a substance included in Schedule II, III, [or] IV, or V for that individual practitioner's personal use, except in a medical emergency.

[(f)] (e) Prescriptions for controlled substances shall be issued only as follows:

- (1) All prescriptions for controlled substances shall be dated as of, and signed on, the day when the prescriptions were issued and shall bear the full name and address of the patient, and the name, address, and registration number of the practitioner. A practitioner may sign a prescription in the same manner as [he] the practitioner would sign a check or legal document (e.g., J.H. Smith or John H. Smith) and shall use both words and figures (e.g., alphabetically and numerically as indications of quantity such as five (5)) to indicate the amount of controlled substance to be dispensed. Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or by typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of [a] the practitioner, but the prescribing practitioner [is] shall be responsible in case the prescription does not conform in all essential respects to [the law and regulations.] this chapter and any rules adopted pursuant to this chapter. A corresponding liability [rests] shall rest upon

[the] a pharmacist who fills a prescription not prepared in the form prescribed by this section[.];

- (2) An intern, resident, or foreign-trained physician, or a physician on the staff of a Department of Veterans [Administration] Affairs facility[,] or other facility serving veterans, exempted from registration under this chapter, shall include on all prescriptions issued by [him] the physician:
  - (A) The registration number of the hospital or other institution [and the]; and
  - (B) The special internal code number assigned to [him] the physician by the hospital or other institution in lieu of the registration number of the practitioner required by this section.

Each written prescription shall have the name of the physician stamped, typed, or handprinted on it, as well as the signature of the physician[.]; and

- (3) An official exempted from registration shall include on all prescriptions issued by [him his] the official:
  - (A) The official's branch of service or agency (e.g., "U.S. Army" or "Public Health Service"); and [his]
  - (B) The official's service identification number, in lieu of the registration number of the practitioner required by this section. The service identification number for a Public Health Service employee [is his] shall be the employee's Social Security identification number.

Each prescription shall have the name of the officer stamped, typed, or handprinted on it, as well as the signature of the officer.

[(g)] (f) A prescription for controlled substances may only be filled by a pharmacist acting in the usual course of [his] the pharmacist's professional practice and either registered individually or employed in a registered pharmacy or registered institutional practitioner."

SECTION 3. Section 329-39, Hawaii Revised Statutes, is amended to read as follows:

**"§329-39 Labels.** (a) Whenever a producer, manufacturer, or wholesaler of controlled substances, or [an apothecary,] a pharmacy sells or dispenses any such drug to [a];

- (1) A producer, manufacturer, or wholesaler [thereof, or to an apothecary,] of controlled substances; or
- (2) A pharmacy, physician, dentist, podiatrist, veterinarian, or practitioner[.];

the producer, manufacturer, wholesaler, or [apothecary] pharmacist shall securely affix to each package in which that drug is contained: a label showing in legible English the name and address of the vendor or dispenser; and the amount, quantity, kinds, and form of controlled [substance] substances contained [therein.] in each package.

(b) Whenever [an apothecary] a pharmacist sells or dispenses any controlled substance on a prescription issued by a physician, dentist, podiatrist, or veterinarian, the [apothecary] pharmacist shall affix to the bottle or other container in which the drug is sold or dispensed [the apothecary's]:

- (1) The pharmacy's name and business address[, the];
- (2) The serial number of the prescription[, the];
- (3) The name [and address] of the patient or, if the patient is an animal, the name [and address] of the owner of the animal and the species of the animal[, the];



(4) The name [and address] of the physician, dentist, podiatrist, or veterinarian by whom the prescription is written[.]; and [such]

(5) Such directions as may be stated on the prescription.

(c) No person shall alter, deface, or remove any label [so] affixed[,] to a package, bottle, or other container in which a drug is sold or dispensed, except for the purpose of replacing [it by] the label with the person's own lawful authorized label."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

## ACT 207

S.B. NO. 2726

A Bill for an Act Relating to Financial Institutions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 207-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The statement filed pursuant to this section shall be accompanied by a registration fee of \$30. The registration fee shall be nonrefundable even in the event of a denial. In addition, foreign lenders who are currently registered pursuant to this chapter shall pay an annual renewal fee of \$30 in order to maintain the immunities and privileges granted in this section. The annual renewal fee shall be due on or before June 30, of each calendar year. The failure to submit the annual renewal fee as required shall result in the automatic cancellation of any statements filed pursuant to this section but shall not retroactively affect or impair any of the immunities provided by this part. [The commissioner may, in] In the commissioner's discretion, [extend] the time period for filing of a renewal fee may be extended for an additional thirty days beyond June 30 of each calendar year if good cause exists for such an extension. The registration fee, annual renewal fee, and any other charge or fee assessed under this part shall be deposited into the financial institution examiners' revolving fund established under section 412:2-109."

SECTION 2. Section 412:2-109, Hawaii Revised Statutes, is amended by amending subsections (g) and (h) to read as follows:

“(g) Before August 16, 1995, and thereafter before July 2, 1996, each financial institution subject to examination by the commissioner shall pay a sum of \$250 plus \$50 for each office, agency, and branch office maintained by the financial institution, to the commissioner to be credited to the financial institution examiners' revolving fund.

(h) Before July 2, 1997, and each year thereafter before July 2, each financial institution subject to examination by the commissioner shall pay a sum of \$500 plus

\$100 for each office, agency, and branch office maintained by the financial institution, to the commissioner to be credited to the financial institution examiners' revolving fund."

SECTION 3. Section 412:2-315, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The commissioner may assess and collect from all affected Hawaii financial institutions their ratable share of the administrative costs incurred by the division in its administration of any emergency orders issued under this section. Administrative costs assessed under this section shall be deposited into the financial institution examiners' revolving fund established under section 412:2-109. The determination of the commissioner of which Hawaii financial institution or institutions are "affected" and the proration method the commissioner chooses to employ in making assessments under this section may be appealed to the circuit court as provided in chapter 91 by any Hawaii financial institution aggrieved thereby."

SECTION 4. Section 412:2-503, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) If the failing financial institution is a bank, savings bank, or depository financial services loan company that is a Hawaii financial institution, or if the institution to result from the acquisition proposed in the application is to be any of the foregoing, the commissioner may accept an application under this part only from:

- (1) A Hawaii financial institution;
- (2) A federal financial institution whose operations are principally conducted in this State (unless the operations of any holding company of such an applicant are principally conducted [in a state other] elsewhere than in Hawaii or a qualifying state);
- (3) A financial institution whose operations are principally conducted in a qualifying state (unless the operations of any holding company of such an applicant are principally conducted [in a state other] elsewhere than in Hawaii or a qualifying state);
- (4) The holding company of any of the foregoing, if any (unless the operations of such holding company or any holding company of such holding company are principally conducted [in a state other] elsewhere than in Hawaii or a qualifying state);
- (5) A person that is not a company; and
- (6) Notwithstanding any other limitations in this section, a bank holding company as defined under the Bank Holding Company Act of 1956, as amended, that is adequately capitalized and adequately managed."

SECTION 5. Section 412:2-611, Hawaii Revised Statutes, is amended to read as follows:

**"§412:2-611 Action to recover administrative fines; deposit to [general] revolving fund.** (a) If any Hawaii financial institution or institution-affiliated party fails to pay an assessment after any administrative fine assessed under this chapter has become final, the commissioner shall recover the amount assessed by action in circuit court, in which case the commissioner may request the court to award reasonable attorney's fees and costs.

(b) [Unless otherwise provided by statute, all] All administrative fines collected under authority of this chapter shall be deposited in the [general] financial

institution examiners' revolving fund [of the State] established under section 412:2-109 .”

SECTION 6. Section 412:3-112, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every Hawaii financial institution [shall], at its own expense, shall file the following written reports with the commissioner:

- (1) An independent audit report of its financial statements as of the close of its fiscal year shall be filed by a Hawaii financial institution, other than a nondepository financial services loan company or credit union, within one hundred twenty days of the close of its fiscal year; provided that the commissioner for good cause shown may grant a reasonable extension of not more than forty-five days. For depository institutions, the independent audit report specified in this paragraph shall [be conducted in accordance] comply with the requirements [of] for annual reports under section 36 of the Federal Deposit Insurance Act (12 U.S.C. §1831m)[.], as amended; provided that for a depository institution which, in any fiscal year, is a small depository institution within the meaning of section 36(j) of the Federal Deposit Insurance Act, or any implementing regulations thereunder, the independent audit report specified in this paragraph shall comply with the requirements for annual independent audits of financial statements under section 36(d). For trust companies, the independent audit report shall contain audited financial statements prepared in accordance with generally accepted accounting principles and shall be based on an audit performed in accordance with generally accepted auditing standards, the independent auditor's report on the fair presentation of the financial statements and any qualification to the report, any management letter, and any other report. Hawaii financial institutions that are subsidiaries of a financial institution holding company may satisfy the requirements of this paragraph by filing an independent audit report of the financial institution holding company;
- (2) Unaudited financial statements as of the following dates shall be filed by a Hawaii financial institution within thirty days of the date of the financial statement as follows:
  - (A) For a nondepository financial services loan company, trust company, or credit union, the statements shall be filed as of June 30 and December 31 of each year; and
  - (B) For a Hawaii financial institution, other than a nondepository financial services loan company, trust company, or credit union, the statements shall be filed as of March 31, June 30, September 30, and December 31 of each year;
 provided that the commissioner for good cause shown may grant a reasonable extension of not more than forty-five days.

The reports shall be in a form prescribed by the commissioner and prepared in accordance with section 412:3-108. In the alternative, the institution may file the Call Reports, Consolidated Reports of Condition and Reports of Income, or Thrift Financial Reports as of those dates which are submitted to the appropriate federal regulatory agency of the institution;

- (3) A notice of any change in the office of the person who has primary responsibility for the operation and management of the financial institution shall be filed by a Hawaii financial institution within ten days of

the change. The notice shall specify the name and address of the person, who shall be designated that institution's "chief executive officer"; and

- (4) Any other reports and other information that the commissioner may require with respect to any financial institution at the times and in the form as the commissioner deems appropriate for the proper supervision and regulation of the institution.

Each report shall be signed by an officer authorized by the institution's board of directors to sign the report, and shall contain a declaration of the officer's authority and a statement that the report is true and correct."

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

## ACT 208

S.B. NO. 2750

A Bill for an Act Relating to Pharmacists.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 328-1 Hawaii Revised Statutes is amended by adding the definition of "pharmacy intern" to be appropriately inserted and to read as follows:

"“Pharmacy intern” means a student or graduate of a school or college of pharmacy issued a permit by the board of pharmacy to work under the immediate supervision of a pharmacist.”

SECTION 2. Section 328-16, Hawaii Revised Statutes is amended by amending subsection (b) to read as follows:

"(b) In addition to the requirements enumerated in subsection (a), a prescription drug shall be dispensed only:

- (1) By a pharmacist or a pharmacy intern upon a written prescription [of] from a practitioner [licensed by law to administer the drug] or an out-of-state practitioner as provided in section 328-17.6; provided that all valid written prescriptions shall include the following information:
  - (A) The date of issuance;
  - (B) The original signature of the practitioner;
  - (C) The practitioner's printed name and business address;
  - (D) The name, strength, and quantity of the drug, and specific directions for the drug's use;
  - (E) The name and address of the person for whom the prescription was written or the name of the owner of the animal for which the drug was prescribed, unless the pharmacy filling the prescription has the address on file;
  - (F) The room number and route of administration, if the patient is in an institutional facility; and

- (G) The number of allowable refills, if the prescription is refillable. If the number of refills authorized by the practitioner is indicated using the terms "as needed" or "prn", the prescription shall not be filled after fifteen months from the date the original prescription was written.
- (2) Upon an oral prescription [of] from the practitioner; provided that:
  - (A) The pharmacist or pharmacy intern shall promptly reduce to writing:
    - (i) The oral prescription in full;
    - (ii) The name, strength, and quantity of the drug, and specific directions for the drug's use;
    - (iii) The date the oral prescription was received;
    - (iv) The name and oral code designation of the [prescriber;] practitioner;
    - (v) The name and address of the person for whom the drug was prescribed or the name of the owner of the animal for which the drug was prescribed, unless the pharmacy filling the prescription has the address on file; and
    - (vi) The department of health assigning the oral code designation to that subscriber;
  - and
  - (B) The prescriptions and records described in subparagraph (A) shall be subject to the inspection of the department or its agents at all times;
- (3) By a practitioner, other than a pharmacist, to an ultimate user; provided that:
  - (A) The practitioner shall promptly record in the practitioner's records:
    - (i) The prescription in full;
    - (ii) The name, strength, and quantity of the drug, and specific directions for the drug's use;
    - (iii) The date the drug was dispensed; and
    - (iv) The name and address of the person for whom the drug was prescribed or the name of the owner of the animal for which the drug was prescribed;
  - and
  - (B) The records described in subparagraph (A) shall be subject to the inspection of the department or its agents at all times;
- and
- (4) By refilling any written or oral prescription if that refilling is authorized by the [prescriber] practitioner either:
  - (A) In the original prescription; or
  - (B) By oral order, which shall be reduced promptly to writing and filed by the pharmacist[.] or pharmacy intern."<sup>1</sup>

SECTION 3. Section 461-8, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) All licenses issued by the board, except temporary licenses issued under section 461-7, shall be renewed biennially on or before December 31 of each odd-numbered year. Failure to pay the biennial fee shall constitute a forfeiture of the license as of the date of expiration.

(b) Any [holder of any expired] license [may be reinstated as a registered pharmacist] forfeited pursuant to subsection (a) may be restored within three years

upon payment of any penalty fee, the current biennial fees, and the renewal fee for the next biennium, if applicable[.], and meeting any other requirements specified in rules adopted pursuant to chapter 91.”

SECTION 4. Section 461-8.5, Hawaii Revised Statutes, is amended to read as follows:

“**§461-8.5 Reciprocity.** (a) Any pharmacist who is registered or licensed under the laws of any state or territory of the United States with qualifications for licensure which equal or exceed those of this State, shall be eligible for licensure; provided that:

- (1) The pharmacist possesses a current valid license;
- (2) The pharmacist has practiced as a registered pharmacist for fifteen hundred hours or more within the five years preceding the date of application;
- (3) There is no disciplinary action pending or other unresolved complaints against the pharmacist in any state or territory of the United States;
- (4) The pharmacist does not have an encumbered license or a pending disciplinary action or unresolved complaint in the practice of pharmacy in any state or territory of the United States, or if any license has been or is encumbered, the pharmacist shall provide any information requested by the board; and
- (5) The laws of the other state or territory grant reciprocal treatment to licensees of this State.

The board may examine these licensees only as to knowledge of this State’s statutes and rules.

(b) An applicant applying for licensure pursuant to this section shall provide proof that the standards upon which licensure was granted by another state or territory of the United States are at least equivalent to the licensing standards that were in effect in this State under sections 461-5 and 461-6 at the time licensure in the other state or territory was granted.

(c) An applicant for reciprocity who is unable to demonstrate that licensure was based on standards at least equal to those in sections 461-5 and 461-6, may be issued a temporary license while fulfilling requirements necessary for licensure in this State. The requirements and limitations of a temporary license shall be the same as those under section 461-7.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

**Note**

1. Period should be underscored.

## ACT 209

S.B. NO. 2773

A Bill for an Act Relating to Drug Product Selection.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 328, Hawaii Revised Statutes, is amended by adding four new sections to part VI to be appropriately designated and to read as follows:

**“§328- Criminal penalty.** Any person who wilfully violates this part or rules adopted under this part shall be guilty of a misdemeanor.

**§328- Administrative penalties.** (a) Any person who violates this part or any rule adopted by the department of health pursuant to this part shall be fined not more than \$10,000 for each separate offense. Any action taken to collect the penalty provided for in this subsection shall be considered a civil action.

(b) In addition to any other administrative or judicial remedy provided by this part, or by rules adopted pursuant to this part, the director of health may impose by order the administrative penalty specified in this section. Factors to be considered in imposing the administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of corrective action. For any judicial proceeding to recover the administrative penalty imposed, the director of health need only show that notice was given, a hearing was held or the time granted for requesting a hearing has expired without such a request, the administrative penalty was imposed, and the penalty remains unpaid.

**§328- Injunctive relief.** The director of health may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent any violation of this part or of any rule adopted under this part. The court shall have the power to grant relief in accordance with the Hawaii rules of civil procedure.

**§328- Powers and duties.** The department of health shall enforce this part and shall have, in connection therewith, all the powers and duties conferred and imposed upon it pursuant to part I.”

SECTION 2. Section 328-91, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:  
““Pharmacist” means a person licensed under chapter 461 to practice in a pharmacy.

“Practitioner” means an individual licensed by the State to prescribe prescription drugs within the scope of the person’s practice.”

2. By amending the definition of “agent” to read:  
““Agent” means a person under the direct supervision of a [dispenser,] pharmacist, acting in the [dispenser’s] pharmacist’s presence.”

3. By deleting the definition of “dispenser”.

[““Dispenser” means a person authorized to dispense drugs in the State.”]

4. By deleting the definition of “prescriber”.

[““Prescriber” means a person licensed by the State to prescribe drug products.”]

SECTION 3. Section 328-92, Hawaii Revised Statutes, is amended to read as follows:

**“§328-92 Drug product selection.** (a) A [dispenser] pharmacist or the [dispenser’s] pharmacist’s authorized agent shall:

- (1) Offer to the consumer substitutable and lower cost equivalent drug products from the formulary[,] adopted pursuant to section 328-96;
- (2) Inform the consumer of the retail price difference between the brand name drug product and the substitutable drug product; and
- (3) Inform the consumer [on his or her] of the consumer’s right to refuse substitution.

The [dispenser] pharmacist shall substitute if the consumer consents, the [prescriber] practitioner does not prohibit substitution under subsection (b), and the price of the substitute equivalent drug product is less than the price of the prescribed drug product. The [dispenser] pharmacist shall not substitute if the consumer refuses.

(b) In filling initial or original prescriptions, the [dispenser] pharmacist shall not substitute an equivalent drug product if the [prescriber,] practitioner, and only the [prescriber,] practitioner, handwrites “do not substitute” on the written prescription. The [dispenser] pharmacist shall not substitute an equivalent drug product if a prescription is ordered orally and the [prescriber] practitioner or authorized employee of the [prescriber] practitioner orally orders “do not substitute”.

The pharmacist shall note the practitioner’s instructions on the prescription record required to be maintained under section 328-17.7.

In refilling prior written prescriptions, the [dispenser] pharmacist shall not substitute an equivalent drug product if the oral prescription is a refill of a prior written prescription for which selection of an equivalent drug product was not permitted; provided that if the prior written prescription permitted the selection of an equivalent drug product, [such] substitution [may be allowed. However, the dispenser] shall be permitted. The pharmacist, however, shall not substitute an equivalent drug product if a refill of a prescription is ordered orally and the [prescriber] practitioner or authorized employee of the [prescriber] practitioner orally orders “do not substitute”.

The designation of “do not substitute” and the physician’s signature shall not be preprinted or stamped on the prescription.

(c) The [dispenser] pharmacist shall not substitute an equivalent drug product unless its price to the purchaser is less than the price of the prescribed drug product.

(d) The pharmacist shall not substitute an equivalent drug product for any prescription for an anti-epileptic drug, except upon the consent of the practitioner and the patient or the patient’s parent or guardian. This narrow exception for epileptic patients shall not be construed as a policy decision to make exceptions for any other conditions.

[(d) Enforcement. Any wilful violation of this part shall be a misdemeanor.]

(e) The county prosecutors and the attorney general may bring action upon complaint by an aggrieved person or upon their own motion in the name of the State against any person to enjoin any violation of this part.”

SECTION 4. Section 328-93, Hawaii Revised Statutes, is amended to read as follows:

**“§328-93 Prescription label.** Every [dispenser] pharmacist or practitioner shall indicate on the label affixed to the immediate container in which the drug product is sold or dispensed the name and strength of the drug product and the name or commonly accepted abbreviation of the principal labeler, and the statement “Substituted for (Brand name of the drug product prescribed)” unless the [prescriber] practitioner specifically states otherwise. The [dispenser] pharmacist shall record on the prescription form the brand name or the name or commonly accepted abbreviation of the principal labeler of the drug product dispensed.”



SECTION 5. Section 328-94, Hawaii Revised Statutes, is amended to read as follows:

**“[[§328-94[]] Prescription record.** Each [dispenser] pharmacist or practitioner shall maintain a record of any substitution of a generically equivalent drug product for a prescribed brand name drug product as provided in this part.”

SECTION 6. Section 328-96, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The department of health shall provide for distribution of the formulary, revisions, and supplements to all [dispensers] pharmacists and [prescribers] practitioners licensed and practicing in this State and to other appropriate individuals. The department of health may establish fees to be charged to persons who receive the formulary, revisions, and supplements. The amounts of the fees charged for the formulary, revisions, and supplements shall be approximately the same as the costs of producing and distributing the formulary, revisions, and supplements.”

SECTION 7. Section 328-98, Hawaii Revised Statutes, is amended to read as follows:

**“[[§328-98[] Dispenser] Pharmacist liability.** A [dispenser] pharmacist who selects an equivalent drug product pursuant to this part assumes no greater liability for selecting the dispensed drug product than would be incurred in filling a prescription for a drug product prescribed by its established name.”

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 9. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 210**

S.B. NO. 2781

A Bill for an Act Relating to Emergency Medical Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 321-224, Hawaii Revised Statutes, is amended to read as follows:

**“§321-224 Department of health, functions, duties.** In addition to other functions and duties assigned under this part, the department shall:

- (1) Regulate ambulances and ambulance services;
- (2) Establish emergency medical services throughout the State, which shall meet the requirements of this part, subject to section 321-228;
- (3) [Provide] Consult and coordinate with the University of Hawaii, or any other accredited community college, college, or university, or any professional organization that provides emergency medical services

- training, regarding the training for basic life support personnel and advanced life support personnel, as provided in section 321-229;
- (4) Collect and evaluate data for the continued evaluation of the state system subject to section 321-230;
  - (5) Coordinate emergency medical resources and the allocation of the state system's services and facilities in the event of mass casualties, natural disasters, national emergencies, and other emergencies, ensuring linkage to local, state, and national disaster plans, and participation in exercises to test these plans;
  - (6) Establish, administer, and maintain a communication system for the state system;
  - (7) Assist each county in the development of a "911" emergency telephone system;
  - (8) Secure technical assistance and other assistance and consultation necessary for the implementation of this part, subject to section 321-230;
  - (9) Implement public information and education programs to inform the public of the state system and its use, and disseminate other emergency medical information, including appropriate methods of medical self-help and first-aid, and the availability of first-aid training programs in the State;
  - (10) Establish standards and provide training for dispatchers in the state system, and maintain a program of quality assurance for dispatch equipment and operations;
  - (11) Establish a program that will enable emergency service personnel to provide early defibrillation;
  - (12) Establish within the department the emergency medical service system for children [program]; [and]
  - (13) Consult with the advisory committee on matters relating to the implementation of this part[.]; and
  - (14) Establish and maintain standards for emergency medical services course instructor qualifications and requirements for emergency medical services training facilities."

SECTION 2. Section 321-229, Hawaii Revised Statutes, is amended to read as follows:

**"§321-229 Emergency medical services personnel, training programs.**

(a) The [department of health] University of Hawaii shall be responsible for the training of basic life support and advance life support personnel [and may contract for such training with accredited community colleges, colleges, and universities, and with professional medical organizations recognized by the American Medical Association].

(b) The University of Hawaii, or other accredited community college, college, or university, or any professional organization that is approved by the department of health to provide emergency medical services training, shall consult with the department of health to determine the number and type of emergency medical services courses necessary to support the staffing requirements for emergency medical services. The basic life support and [advance] advanced life support training programs shall be relevant to and consistent with the training course required for certification under chapter 453.

(c) The department shall develop standards for emergency medical services course instructors and standards for emergency medical services training facilities for all basic life support personnel, advanced life support personnel, users of the automatic external defibrillator, and emergency medical dispatch personnel that

shall be at least equivalent to or exceed the standards necessary to meet the requirements, pursuant to part II of chapter 453, for the certification of basic life support personnel and advanced life support personnel.

(d) The department of health may conduct annual inspections of the training facilities and evaluate the qualifications of course instructors to ensure that the standards and qualifications are consistent with the medical standards for basic life support personnel, advanced life support personnel, users of the automatic external defibrillators, and emergency medical dispatch personnel."

SECTION 3. All temporary faculty members in bargaining unit 07 in the emergency medical services training program at Kapiolani community college who are employed and meet the minimum qualifications of their faculty rank as of June 30, 1996, shall be placed in authorized instructional positions at their current rank effective July 1, 1996, without loss of salary, seniority, prior service credits, sick leave, or other employee benefits or privileges and without necessity of application. If eligible, the employees shall be placed in tenure track positions. All civil service employees in bargaining unit 03 in the emergency medical services training program at Kapiolani community college who are employed and meet the minimum qualifications, shall be placed in authorized positions at their current salary range and step effective July 1, 1996, without loss of salary, seniority, prior service credits, sick leave, or other employee benefits or privileges and without the necessity of application.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 1996.

(Approved June 17, 1996.)

## ACT 211

S.B. NO. 2789

A Bill for an Act Relating to Obsolete or Unenforceable Health Statutes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 321-3, Hawaii Revised Statutes, is repealed.

SECTION 2. Section 321-44, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 321-243, Hawaii Revised Statutes, is repealed.

SECTION 4. Part XX of chapter 321, Hawaii Revised Statutes, is repealed.

SECTION 5. Chapter 321F, Hawaii Revised Statutes, is repealed.

SECTION 6. Chapter 321G, Hawaii Revised Statutes, is repealed.

SECTION 7. Section 325-7, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 325-10, Hawaii Revised Statutes, is repealed.

SECTION 9. Statutory material to be repealed is bracketed.<sup>1</sup>

SECTION 10. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 212**

S.B. NO. 2811

A Bill for an Act Relating to a Deferred Compensation Retirement Plan for Part-time, Temporary, and Seasonal/Casual Employees.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to authorize the creation of a new deferred compensation retirement plan for part-time, temporary, and seasonal or casual employees who are not eligible to participate in the State's existing deferred compensation plan or employees' retirement system. These employees currently contribute to Social Security. By participating in this plan, the part-time, temporary, and seasonal or casual employees will not be required to contribute to Social Security (these employees will still be required to contribute to Medicare). Additionally, the State will not be required to pay the mandatory Social Security contributions, which will result in savings to the State.

Participation in this plan shall be mandatory and the contribution rate shall be seven and five-tenths per cent of the employee's gross monthly wages. The employees will be able to withdraw all of their money from the plan after terminating their employment with the State.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
DEFERRED COMPENSATION RETIREMENT PLAN FOR PART-  
TIME, TEMPORARY, AND SEASONAL OR CASUAL EMPLOYEES**

§ -1 **Definitions.** As used in this chapter, unless the context clearly indicates otherwise:

“County” means the counties of Honolulu, Hawaii, Kauai, and Maui.

“Employee” means a part-time, temporary, seasonal or casual employee, as defined by rules of the board of trustees, who is not eligible to participate in the employees' retirement system of the State under chapter 88.

“State” means the State of Hawaii.

§ -2 **State deferred compensation retirement plan for part-time, temporary, and seasonal or casual employees.** The State may establish a deferred compensation retirement plan in accordance with sections 457 and 3121 of the Internal Revenue Code of 1986, as amended, for the benefit of employees to defer a portion of their compensation to a future period of time. Participation in the plan shall be mandatory, with a mandatory payroll deduction by the employee equal to seven and five-tenths per cent of the employee's gross monthly wages, which shall be contributed to the plan.

§ **-3 Board of trustees.** (a) The authority to establish the plan and implement this chapter is vested in the board of trustees which currently administers the state deferred compensation plan under chapter 88E.

(b) The board shall adopt, in accordance with chapter 91, rules as are necessary to implement this chapter. The board may engage services, as necessary, to establish, administer, or maintain the plan under its direction. An administrator may be engaged only after a solicitation of proposals from interested persons in accordance with specifications deemed appropriate by the board.

§ **-4 Compensation and expenses.** Each trustee shall serve without compensation but shall be reimbursed by the plan for any necessary expense incurred in the performance of the trustee's duties pertaining to the plan.

§ **-5 Legal adviser.** The attorney general shall be the legal adviser of the board.

§ **-6 Deferred funds.** Sums deferred under the plan, as well as property and rights purchased with the amounts and income attributable to the amounts, shall remain an unrestricted asset of the respective state or county jurisdiction.

§ **-7 Investments.** The board may create a trust or other special funds for the segregation of funds or assets resulting from compensation deferred and for the administration of the plan. Funds held by the board pursuant to a plan established under this chapter shall be invested in accordance with investment products permitted under the plan; provided that any investment contract entered into shall be made with companies authorized and licensed to do business in the State. Investment products shall be limited to annuities, life insurance, savings accounts, mutual funds, or any combination thereof which shall have been reviewed and selected by the board after a competitive bidding process based on the specifications and considerations deemed appropriate by the board. Investment products must guarantee a full return of principal. The investments shall not be construed to be a prohibited use of general assets of the State. Nothing in this chapter shall be construed to permit any type of investment prohibited by law.

§ **-8 Custodian of the funds.** The state director of finance shall be the custodian of the funds created under the plan. All payments from the fund shall be made by the director only upon vouchers signed by the chairperson of the board and countersigned by other persons designated by the board.

§ **-9 Limitation on liability.** The State or county shall not be liable for the sums deferred or the results of any investment product.

§ **-10 Deferred amounts as compensation.** Any compensation deferred pursuant to a plan established under this chapter shall be deemed regular compensation, but shall not be included in the computation of federal income taxes withheld on behalf of any participating employee.

§ **-11 Costs of the plan.** Costs for implementing and administering the plan shall be borne by the plan and its participants, except for incidental expenses, such as the cost of payroll deductions and the routine processing of forms.

§ **-12 County deferred compensation retirement plan for part-time, temporary, and seasonal or casual employees.** The counties may establish a deferred compensation retirement plan in accordance with sections 457 and 3121 of

the Internal Revenue Code of 1986, as amended, for their respective part-time, temporary, and seasonal or casual employees. A plan so established need not be subject to the other provisions of this chapter, but shall be in compliance with applicable federal laws and regulations. A plan established by a county shall be the sole responsibility of and administered by that county. The board shall not be responsible or liable for any county plan.

§ -13 Existing retirement and deferred compensation plans. This chapter shall not affect any existing retirement or deferred compensation plans established under section 457 of the Internal Revenue Code of 1986, as amended, or chapter 88E."

SECTION 3. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

## ACT 213

S.B. NO. 2819

A Bill for an Act Relating to State Finances.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I

SECTION 1. Section 103-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person who renders a proper statement for goods delivered or services performed, pursuant to contract, to any agency of the State or any county, shall be paid no later than thirty calendar days following receipt of the statement or satisfactory delivery of the goods or performance of the services. In the event circumstances prevent the paying agency from complying with this section, the person shall be entitled to interest from the paying agency on the principal amount remaining unpaid at [the effective rate of twelve per cent simple interest per year] a rate equal to the prime rate for each calendar quarter plus two per cent, but in no event shall exceed twelve per cent a year, commencing on the thirtieth day following receipt of the statement or satisfactory delivery of the goods or performance of the services, whichever is later, and ending on the date of the warrant. As used in this subsection, "prime rate" means the prime rate as posted in the Wall Street Journal on the first business day of the month preceding the calendar quarter."

### PART II

SECTION 2. The legislature determines that there is in the rental assistance revolving fund at least \$13,500,000 in excess of the requirements of the fund. There is hereby authorized and appropriated from the retained earnings in the rental assistance revolving fund created by section 201E-132, Hawaii Revised Statutes, the sum of \$13,500,000 for fiscal year 1996-1997, to be deposited into the general fund.

SECTION 3. The legislature determines that there is in the agriculture loan revolving fund at least \$3,700,000 in excess of the requirements of the fund. There is hereby authorized and appropriated from the retained earnings in the agriculture loan

revolving fund created by section 155-14, Hawaii Revised Statutes, the sum of \$3,700,000 for fiscal year 1996-1997, to be deposited into the general fund.

SECTION 4. The legislature determines that there is in the aquaculture loan revolving fund at least \$400,000 in excess of the requirements of the fund. There is hereby authorized and appropriated from the retained earnings in the aquaculture loan revolving fund created by section 219-4, Hawaii Revised Statutes, the sum of \$400,000 for fiscal year 1996-1997, to be deposited into the general fund.

SECTION 5. The legislature determines that there is in the state motor pool revolving fund at least \$225,000 in excess of the requirements of the fund. There is hereby authorized and appropriated from the retained earnings in the state motor pool revolving fund created by section 105-11, Hawaii Revised Statutes, the sum of \$225,000 for fiscal year 1996-1997, to be deposited into the general fund.

SECTION 6. The legislature determines that there is in the Hawaii small fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund at least \$50,000 in excess of the requirements of the fund. There is hereby authorized and appropriated from the retained earnings in the Hawaii small fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund created by section 189-43, Hawaii Revised Statutes, the sum of \$50,000 for fiscal year 1996-1997, to be deposited into the general fund.

SECTION 7. The legislature determines that there is in the Hawaii large fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund at least \$150,000 in excess of the requirements of the fund. There is hereby authorized and appropriated from the retained earnings in the Hawaii large fishing vessel purchase, construction, renovation, maintenance, and repair loan revolving fund created by section 189-23, Hawaii Revised Statutes, the sum of \$150,000 for fiscal year 1996-1997, to be deposited into the general fund.

SECTION 8. The legislature determines that there is in the Hawaii innovation development revolving fund at least \$150,000 in excess of the requirements of the fund. There is hereby authorized and appropriated from the retained earnings in the Hawaii innovation development revolving fund created by section 211E-2, Hawaii Revised Statutes, the sum of \$150,000 for fiscal year 1996-1997, to be deposited into the general fund.

SECTION 9. The legislature determines that there is in the state highway fund at least \$19,000,000 in excess of the requirements of the fund. There is hereby authorized and appropriated from the retained earnings in the state highway fund created by section 248-8, Hawaii Revised Statutes, the sum of \$19,000,000 for fiscal year 1996-1997, to be deposited into the general fund.

SECTION 10. The legislature determines that there is in the state educational facilities improvement special fund at least \$2,516,700 in excess of the requirements of the fund. There is hereby authorized and appropriated from the retained earnings in the state educational facilities improvement special fund created by section 36-32, Hawaii Revised Statutes, the sum of \$2,516,700 for fiscal year 1996-1997, to be deposited into the general fund.

PART III

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 12. This Act shall take effect on July 1, 1996.

(Approved June 17, 1996.)

ACT 214

S.B. NO. 2821

A Bill for an Act Relating to the Uniform Unclaimed Property Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 523A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§523A- Escheat process.** (a) Any property in custody of the State pursuant to this chapter at the close of a fiscal year ending June 30, shall escheat to the State as follows:

- (1) If the value of the property is greater than \$10,000, the property shall escheat six years after the end of the fiscal year in which the property was paid or delivered to the director;
- (2) If the value of the property is greater than \$5,000 but less than or equal to \$10,000, the property shall escheat five years after the end of the fiscal year in which the property was paid or delivered to the director;
- (3) If the value of the property is greater than \$1,000 but less than or equal to \$5,000, the property shall escheat four years after the end of the fiscal year in which the property was paid or delivered to the director;
- (4) If the value of the property is greater than \$100 but less than or equal to \$1000, the property shall escheat three years after the end of the fiscal year in which the property was paid or delivered to the director; and
- (5) If the value of the property is less than or equal to \$100, the property shall escheat two years after the end of the fiscal year in which the property was paid or delivered to the director;

provided that the property for which a timely claim has been filed with the director pursuant to section 523A-24, or a timely action has been filed pursuant to section 523A-26, shall not escheat until the disposition of the claim or action.

(b) The director shall cause a notice to be published no later than April 1 of the fiscal year ending June 30 in which the property shall escheat to the State at least once in a newspaper of general circulation in the State.

(c) The notice shall be entitled, “Notice to Declare Certain Abandoned Property Escheated to the State of Hawaii” and contain:

- (1) A statement that any property presumed abandoned and paid or delivered to the director that remains unclaimed as of June 30 of the year the notice is published and that meets the escheat criteria established in subsection (a)(1), (2), (3), (4), or (5) shall escheat to the State on June 30, and all rights, title, or interest of the owner shall be terminated and all claims of the owner shall be forever barred;
- (2) A statement listing the names of owners of abandoned property with a value greater than \$5,000 scheduled to escheat to the State; and



- (3) A statement identifying the location where a list of names and last known addresses, if any, of persons appearing to be owners of abandoned property subject to escheat on June 30 of the year the notice is published; and stating that this list shall be made available as a government record.

This section shall not apply to sums payable on:

- (1) Travelers checks, money orders and other written instruments presumed abandoned under section 523A-4; or
- (2) Checks, drafts or similar instruments on which a banking or financial organizations is directly liable, including a cashier's check and a certified check presumed abandoned under section 523A-5."

SECTION 2. Section 523A-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"“Escheat” means the taking of title or interest by the State of property presumed abandoned.”

SECTION 3. Section 523A-17, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The report shall be filed before November 1 of each year as of June 30, next preceding[, but the report of any life insurance company shall be filed before May 1 of each year as of December 31 next preceding]. On written request by any person required to file a report, the director may postpone the reporting date.”

SECTION 4. Section 523A-18, Hawaii Revised Statutes, is amended by amending its title and subsections (a) and (b) to read as follows:

**“[[§523A-18]] Notice and publication [of lists] of abandoned property.** (a) The director shall cause a notice to be published for all properties reported abandoned not later than March 1[, or in the case of property reported by life insurance companies, September 1,] of the year immediately following the report required by section 523A-17 at least once [a week for two consecutive weeks] in a newspaper of general circulation in the [county of this] State [in which is located the last known address of any person to be named in the notice. If no address is listed or the address is outside this State, the notice shall be published in the county in which the holder of the property has its principal place of business within this State].

(b) The published notice shall be entitled “Notice [of Names of] to Persons Appearing to be Owners of Abandoned Property” and contain:

- (1) The names in alphabetical order and last known address, if any, of persons listed in the report [and entitled to notice within the county as specified in subsection (a);] with property valued greater than \$100;
- (2) A statement identifying the location of a list of names and last known addresses, if any, of persons appearing to be owners of abandoned property and stating that this list shall be made available as a government record;

[(2)] (3) A statement that information concerning the property and the name and last known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the director; and

[(3)] (4) A statement that if proof of claim is not presented by the owner to the holder and the owner's right to receive the property is not established to the holder's satisfaction before April 20, [or, in the case of

property reported by life insurance companies, before October 20,] the property will be placed not later than May 1, [or in the case of property reported by life insurance companies, not later than November 1,] in the custody of the director and all further claims shall thereafter be directed to the director.”

SECTION 5. Section 523A-24, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The director shall consider each claim within [ninety] one hundred twenty days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. The notice may be given by mailing it to the last address, if any, stated in the claim as the address to which notices are to be sent. If no address for notice is stated in the claim, the notice may be mailed to the last address, if any, of the claimant as stated in the claim. No notice of denial need be given if the claim fails to state either the last address to which notices are to be sent or the address of the claimant.”

SECTION 6. Section 523A-25, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The claim of another state to recover escheated or abandoned property shall be presented in a form prescribed by the director, who shall decide the claim within [ninety] one hundred twenty days after it is presented. The director shall allow the claim if the director determines that the other state is entitled to the abandoned property under subsection (a).”

SECTION 7. Section 523A-26, Hawaii Revised Statutes, is amended to read as follows:

“**[[]§523A-26[]] Action to establish claim.** A person aggrieved by a decision of the director or whose claim has not been acted upon within [ninety] one hundred twenty days after its filing may bring an action to establish the claim in the circuit court, naming the director as a defendant. The action shall be brought within ninety days after the decision of the director or within one hundred eighty days after the filing of the claim if the director has failed to act on it. If the aggrieved person establishes the claim in an action against the director, the court shall award the aggrieved person costs and reasonable attorney’s fees.”

SECTION 8. Section 523A-56, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) When a report is received from the Comptroller General or other proper officer of the United States, the director shall cause the notice described in subsection (b) to be published not later than [September] May 1 of the year immediately following the report required by section 523A-54, at least once [a week, for two consecutive weeks] in a newspaper of general circulation in the [county of this] State [in which is located the last known address of any person to be named in the notice. If no address is listed or the address is outside this State, the notice shall be published in the city and county of Honolulu].

(b) The published notice shall contain:

- (1) The names in alphabetical order and last known address, if any, of [persons] any person listed in the report [and entitled to notice within

the county as specified in subsection (a); and] with property valued greater than \$100;

- (2) A statement identifying the location of a list of names and last known addresses, if any, of persons appearing to be owners of abandoned property; and stating that this list shall be made available as a government record; and
- [(2)] (3) A statement that information concerning the property and the name and last known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the director.’’

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 10. This Act shall take effect on July 1, 1996.

(Approved June 17, 1996.)

**Note**

- 1. Edited pursuant to HRS §23G-16.5.

**ACT 215**

S.B. NO. 2875

A Bill for an Act Relating to Absentee Voting.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 15, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§15- Absentee voting in precinct affected by natural disasters.** (a) If the chief election officer and clerk of a county affected as a result of a natural disaster determine that the opening of a designated polling place will adversely affect the health and safety of voters or precinct officials, the chief election officer and county clerk, by written order, may require the registered voters of any precinct to vote by absentee ballot; provided that if there are not enough absentee ballots for all voters of the precinct, the chief election officer or the clerk shall use other official ballots to make up the difference.

(b) Within thirty days after the issuance of such an order, the chief election officer and county clerk shall notify all registered voters in the affected precinct of the issuance of the order.

(c) Within ten days after the printed official absentee ballots are available for the designated precinct affected by this section, the clerk shall deliver, or cause to be delivered, by hand or mail, an absentee ballot, a return envelope, and any other appropriate material to each registered voter in the affected precinct.

(d) The chief election officer shall adopt rules pursuant to chapter 91 to implement this section.’’

SECTION 2. Section 11-92.1, Hawaii Revised Statutes, is amended to read as follows:

**“§11-92.1 Election proclamation[:]; establishment of a new precinct.** (a) The chief election officer shall issue a proclamation whenever a new precinct is established in any representative district. The chief election officer shall provide a

suitable polling place for each precinct. Schools, recreational halls, park facilities, and other publicly owned or controlled buildings [shall], whenever possible and convenient, shall be used as polling places. The chief election officer shall make arrangements for the rental or erection of suitable shelter for this purpose whenever public buildings are not available and shall cause these polling places to be equipped with the necessary facilities for lighting, ventilation, and equipment needed for elections on any island. This proclamation may be issued jointly with the proclamation required in section 11-91.

(b) No change shall be made in the boundaries of any precinct later than 4:30 p.m. on the tenth day prior to the close of filing for an election.

(c) Notwithstanding subsection (a), and pursuant to section 15-\_\_\_\_, the chief election officer is not required to establish polling places for precincts affected by natural disasters, as provided in section 15-\_\_\_\_."

SECTION 3. Section 11-92.3, Hawaii Revised Statutes, is amended to read as follows:

**"§11-92.3 Consolidated precincts[:]; natural disasters; postponement; absentee voting required; special elections.** (a) In the event of a flood, tsunami, earthquake, volcanic eruption, high wind, or other natural disaster, occurring prior to an election [which], that makes a precinct inaccessible, the chief election officer or county clerk in the case of county elections may consolidate precincts within a representative district. If the extent of damage caused by any natural disaster is such that the ability of voters, in any precinct, district, or county, to exercise their right to vote is substantially impaired, the chief election officer or county clerk in the case of county elections may require the registered voters of the affected precinct to vote by absentee ballot pursuant to section 15-\_\_\_\_\_ and may postpone the conducting of an election in [a] the affected precinct[, district, or county] for no more than [seven] twenty-one days; provided that any such postponement shall not affect the conduct of the election, tabulation, or distribution of results for those precincts, districts, or counties not designated for postponement. The chief election officer or county clerk in the case of county elections shall give notice of the consolidation [or], postponement, or requirement to vote by absentee ballot, in the affected county or precinct prior to the opening of the precinct polling place by whatever possible news or broadcast media are available. Precinct officials and workers affected by any consolidation shall not forfeit their pay.

(b) In the event the chief election officer or the county clerk in a county election determines that the number of candidates or issues on the ballot in a special, special primary, or special general election does not require the full number of established precincts, such precincts may be consolidated for the purposes of the special, special primary, or special general election into a small number of special, special primary, or special general election precincts. A special, special primary, or special general election precinct shall be considered the same as an established precinct for all purposes, including precinct official requirements provided in section 11-71. Not later than 4:30 p.m. on the tenth day prior to the special, special primary, or special general election, the chief election officer or the county clerk shall give public notice, in a newspaper of general circulation in the area in which the special, special primary, or special general election is to be held, of the special, special primary, or special general election precincts and their polling places. Notices of [such] the consolidation also shall [also] be posted on election day at the established precinct polling places, giving the location of the special, special primary, or special general election precinct polling place."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 216

S.B. NO. 2888

A Bill for an Act Relating to the Release of Pretrial Inmates.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 305, Session Laws of Hawaii 1993, as amended by Act 156, Session Laws of Hawaii 1995, is amended by amending section 2 to read as follows:

“SECTION 2. No less than twenty days prior to the convening of the regular session of the legislature in each year from 1994[, 1995, 1996, and 1997,] through 1998, the director shall report the progress of the program, and make recommendations for further legislative action.”

SECTION 2. Act 195, Session Laws of Hawaii 1994, as amended by Act 156, Session Laws of Hawaii 1995, is amended by amending section 2 to read as follows:

“SECTION 2. No later than twenty days prior to the convening of the regular session [of] in each year from 1995[, 1996, and 1997,] through 1998, the director shall submit a written report to the legislature on the recidivism rate of pretrial inmates released under this program.”

SECTION 3. Act 305, Session Laws of Hawaii 1993, as amended by Act 156, Session Laws of Hawaii 1995, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect on July 1, 1993, and shall be repealed on June 30, [1996.] 1998.”

SECTION 4. Act 195, Session Laws of Hawaii 1994, as amended by Act 156, Session Laws of Hawaii 1995, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect upon its approval, and shall be repealed on June 30, [1996.] 1998.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on June 29, 1996.

(Approved June 17, 1996.)

A Bill for an Act Relating to Corrections.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 353-16.2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The director may effect the transfer of a committed felon to any correctional institution located in another state regardless of whether the state is a member of the Western Interstate Corrections Compact; provided that the institution is in compliance with [the standards of the American Correctional Association,] appropriate health, safety, and sanitation codes of the state, provides a level of program activity for the inmate that is suitable, and is operated [either] by that state, by any of its political subdivisions, or by a private institution; and provided further that the transfer is either:

- (1) In the interest of the security, management[, of the correctional institution where the inmate is presently placed, or the reduction of prison overcrowding; or
- (2) In the interest of the inmate.

[All transfers authorized pursuant to this subsection shall be in accordance with rules adopted by the director pursuant to chapter 91.]”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

A Bill for an Act Making Appropriations for Programs to Reduce Prison and Jail Overcrowding.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to implement programs needed to address the problem of prison and jail overcrowding by appropriating funds for programs authorized by Act 25, Special Session Laws of Hawaii 1995.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the following sums, or so much thereof as may be necessary for fiscal year 1996-1997 to carry out the purposes of this Act:

- (1) \$191,000 for personnel costs, other current expenses and equipment for the assessment center of the sex offender treatment program;
- (2) \$16,000 for the purchase of services for medically disabled inmates in the sex offender treatment program; and
- (3) \$74,137 for personnel costs, other current expenses, and equipment for two additional parole officers to adequately meet the current caseload.

The sums appropriated shall be expended by the department of public safety.

SECTION 3. This Act shall take effect on July 1, 1996.

(Approved June 17, 1996.)

ACT 219

S.B. NO. 2902

A Bill for an Act Relating to the University of Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 26-52, Hawaii Revised Statutes, is amended to read as follows:

**“§26-52 Department heads and executive officers.** The salaries of the following state officers shall be as follows:

- (1) The salary of the superintendent of education shall be \$90,041 a year;
- (2) The salary of the president of the University of Hawaii shall be set by the board of regents; provided that effective July 1, [1998,] 2011, the salary of the president of the University of Hawaii shall be set by the legislature;
- (3) The salaries of all department heads or executive officers of the departments of accounting and general services, agriculture, attorney general, budget and finance, business, economic development, and tourism, commerce and consumer affairs, Hawaiian home lands, health, human resources development, human services, labor and industrial relations, land and natural resources, public safety, taxation, and transportation shall be \$85,302 a year; and
- (4) The salary of the adjutant general shall be \$85,302 a year; provided that if this salary is in conflict with the pay and allowance fixed by the tables of the regular army or air force of the United States, the latter shall prevail.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

ACT 220

S.B. NO. 2941

A Bill for an Act Relating to a Commercial Fisheries Special Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 189, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§189- Commercial fisheries special fund.** (a) There is established in the treasury of the State and administered by the department a commercial fisheries special fund.

(b) The following proceeds shall be retained by or transmitted to the department for deposit into the commercial fisheries special fund:

- (1) Moneys collected as fees for commercial fishing licenses and permits, use of public fishing grounds for commercial fishing purposes, and use of facilities related to commercial fisheries;
- (2) Moneys collected under the provision of any law or rule related to the importation, rearing of bait, fishing, taking, catching, or killing of any aquatic life for commercial purposes;
- (3) Moneys, other than informers' fees authorized under section 187A-14, collected as fines or bail forfeitures or administrative fines for violations of this chapter;
- (4) Moneys collected from the sale of any article purchased from the department related to aquatic life used for commercial purposes or fishing for commercial purposes;
- (5) Any monetary contributions or moneys collected from the sale of non-monetary gifts to benefit aquatic life used for commercial purposes or fishing for commercial purposes; and
- (6) Moneys derived from interest, dividend, or other income from the above sources.

(c) Expenditures from the commercial fisheries special fund shall be limited to the following:

- (1) Programs and activities for projects concerning aquatic life used for commercial purposes;
- (2) Developing and conducting resource monitoring programs, conducting studies to determine the sustainable use of aquatic life for commercial purposes, and developing recommendations for acceptable levels of use; and
- (3) Research programs and activities concerning the conservation and management of aquatic life for commercial purposes. Research programs and activities conducted under this paragraph may be conducted by personnel of the department or through grants-in-aid to or contracts with the University of Hawaii or other qualified organizations or individuals.

(d) The proceeds of the commercial fisheries special fund shall not be used as security for, or pledged to the payment of principal or interest on, any bonds or instruments of indebtedness.

(e) In addition to subsection (c), the department may use moneys in the commercial fisheries special fund for the importation and management, preservation, propagation, and protection of aquatic life used for commercial purposes in the State.

(f) Nothing in this section shall be construed to prohibit the use of general funds or the funds of other programs and activities to implement or enforce title 12, subtitle 5, concerning the management and conservation of aquatic life used for commercial purposes.

(g) This section shall be repealed on June 30, 2001; provided that upon its repeal, all unexpended and unencumbered moneys remaining on balance within the commercial fisheries special fund shall lapse into the general fund."

SECTION 2. There is appropriated out of the commercial fisheries special fund the sum of \$100,000, or so much thereof as may be necessary, for fiscal year 1996-1997 to carry out the purposes of the commercial fisheries special fund.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of the commercial fisheries special fund.



SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval; provided that section 2 shall take effect on July 1, 1996.

(Approved June 17, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 221**

S.B. NO. 2984

A Bill for an Act Relating to the Landlord-Tenant Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 521-71, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Whenever the term of the rental agreement expires, whether by passage of time, by mutual agreement, by the giving of notice as provided in subsection (a), (b), (c), or (d) or by the exercise by the landlord of a right to terminate given under this chapter, if the tenant continues in possession after the date of termination without the landlord’s consent, the tenant [shall] may be liable [for and shall pay] to the landlord for a sum not to exceed twice the monthly rent under the previous rental agreement, computed and prorated on a daily basis, for each day the tenant remains in possession. The landlord may bring a summary proceeding for recovery of the possession of the dwelling unit at any time during the first sixty days of holdover. Should the landlord fail to commence summary possession proceedings within the first sixty days of the holdover, in the absence of a rental agreement, a month-to-month tenancy at the monthly rent stipulated in the previous rental agreement shall prevail beginning at the end of the first sixty days of holdover.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

**ACT 222**

S.B. NO. 3068

A Bill for an Act Relating to Telecommunication Service Offenses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the rapid growth of the telecommunications industry, including, in particular, cellular telephones and related technologies, requires additional legislation targeted at combating the increasingly sophisticated means used to defraud the providers of these services.

SECTION 2. Section 708-800, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Telecommunication service provider” means any person that owns, operates, manages, or controls any facility used to furnish telecommunication services for profit to the public, or to classes of users as to be effectively available to the public, engaged in the provision of services, such as voice, data, image, graphics, and video services, that make use of all or part of their transmission facilities, switches, broadcast equipment, signalling, or control devices.”

2. By amending the definitions of “telecommunication service” and “telecommunication service device” to read:

““Telecommunication service” means [any service involving (a) the transmission of messages or signals by telephone or telegraph, with the aid of wire, cable, microwave transmissions, fiber optics or other like connections; or (b) the transmission of intelligence by electricity by land, water, or air within the State.] the offering of transmission between or among points specified by a user, of information of the user’s choosing, including voice, data, image, graphics, and video without change in the form or content of the information, as sent and received, by means of electromagnetic transmission, or other similarly capable means of transmission, with or without benefit of any closed transmission medium, and does not include cable service as defined in section 440G-3.”

“Telecommunication service device” means any mechanical or electronic instrument, apparatus, equipment, or device which can be used to obtain telecommunication services without payment of applicable charges therefor[.] and shall include any such device that is capable of, or has been altered, modified, programmed, or reprogrammed alone or in conjunction with another device or other equipment so as to be capable of acquiring or facilitating the acquisition of any electronic serial number, mobile identification number, personal identification number, or any telecommunication service without payment of the applicable charges therefor. A “telecommunication service device” includes telecommunication devices altered to obtain service without the consent of the telecommunication service provider, tumbler phones, counterfeit or clone microchips, scanning receivers of wireless telecommunication service of a telecommunication service provider, and other instruments capable of disguising their identity or location or of gaining access to a communications system operated by a telecommunication service provider. A “telecommunication service device” does not include any telephone or telegraph instrument, equipment, device, facility, or any component thereof furnished by a provider of telecommunication services in the ordinary course of its business[.] nor any device operated by a law enforcement agency in the normal course of its activities.”

SECTION 3. Section 708-8202, Hawaii Revised Statutes, is amended to read as follows:

**“§708-8202 Telecommunication service fraud in the first degree.** (1) A person commits the offense of telecommunication service fraud in the first degree if the person:

- (a) Knowingly publishes plans or instructions for making, assembling, or using a telecommunication service device, or sells, offers to sell, distributes, transfers, or otherwise makes available written instructions [or], plans, or materials including hardware, cables, tools, data, computer software, or other information or equipment to make or assemble a telecommunication service device and knows that the written plans [or], instructions, or materials are intended to be used to make or assemble a device to obtain telecommunication service without payment of applicable charges;

- (b) Knowingly makes, assembles, sells, offers to sell, advertises, distributes, transports, transfers, or otherwise makes available a telecommunication service device and knows that the device is intended to be used to obtain telecommunication service without payment of [application] applicable charges; or
- (c) With the intent to defraud another of the lawful charge for any [telephone] telecommunication service that is provided for a charge or compensation:
  - (i) [Sells,] Publishes, sells, offers for sale, or otherwise makes available[,] an access device, without obtaining the consent of the holder of the access device[, an existing, canceled, or revoked access device;] or the telecommunication service provider;
  - (ii) Uses[,] an access device, without obtaining the consent of the holder of the access device[, an existing, canceled, or revoked access device] or the telecommunication service provider, resulting in obtaining services, the value of which exceeds \$300 in any six-month period; [or]
  - (iii) Engages in a scheme constituting a systematic and continuing course of conduct to obtain an [existing, canceled, or revoked] access device from another by false or fraudulent pretenses, representations, or promises and does obtain an [existing, canceled, or revoked] access device from the other person[.]; or
  - (iv)<sup>1</sup> Uses a telecommunication service device for the purpose of obtaining telecommunication services, the value of which exceeds \$300 in any six-month period, without obtaining the consent of the holder of the telecommunication service device or the telecommunication service provider.

(2) For the purpose of this section:

“Access device” means any number or code of an existing, canceled, revoked, or nonexistent telephone number, telephone calling card number, credit card number, account number, [or] personal identification number, or other credit device or method of numbering or coding which is employed in the issuance of telephone numbers, credit numbers, or other credit devices that can be used to obtain [telephone] telecommunication service.

“Holder of access device” means a person or organization to which an access device has been issued by a [telephone] telecommunication service [company.] provider.

“Publish” means the communication or dissemination of information to any one or more persons, either orally, in person, or by telephone, radio, television, or computer, or in a writing of any kind, including without limitation a letter, memorandum, circular, handbill, newspaper, magazine article, or book.

(3) Telecommunication service fraud in the first degree is a class C felony.”

SECTION 4. Section 708-8203, Hawaii Revised Statutes, is amended to read as follows:

**“§708-8203 Telecommunication service fraud in the second degree. (1)**

A person commits the offense of telecommunication service fraud in the second degree if the person:

- (a) Knowingly possesses a telecommunication service device with the intent to obtain telecommunication service without payment of applicable charges;
- (b) Knowingly possesses written instructions or plans to make or assemble a telecommunication service device with the intent to use the written

- plans or instructions to make or assemble a device to obtain telecommunication service without payment of applicable charges; or
- (c) With the intent to defraud another of the lawful charge for any [telephone] telecommunication service, that is provided for a charge or compensation[, and]:
- (i) Uses an access device without obtaining the consent of the holder of the access device[, uses an existing, canceled, or revoked access device] or the telecommunication service provider, resulting in obtaining services, the value of which does not exceed \$300 in any six-month period[.]; or
  - (ii) Uses a telecommunication service device for the purpose of obtaining telecommunication services, the value of which does not exceed \$300 in any six-month period, without obtaining the consent of the holder of the telecommunication service device or the telecommunication service provider.

(2) For the purposes of this section:

“Access device” means any number or code of an existing, canceled, revoked, or nonexistent telephone number, telephone calling card number, credit card number, account number, [or] personal identification number, or other credit device or method of numbering or coding which is employed in the issuance of telephone numbers, credit numbers, or other credit devices that can be used to obtain [telephone] telecommunication service.

“Holder of access device” means a person or organization to which an access device has been issued by a [telephone] telecommunication service [company.] provider.

(3) Telecommunication service fraud in the second degree is a misdemeanor.”

SECTION 5. Section 708-8204, Hawaii Revised Statutes, is amended to read as follows:

**“§708-8204 Forfeiture of telecommunication service device and cable television service device.** Any telecommunication service device, cable television service device, or instructions or plans therefor, or any materials for making or assembling a telecommunication service device possessed or used in violation of sections 708-8200 to 708-8203 may be ordered forfeited to the State for destruction or other disposition, subject to the requirements of chapter 712A.”

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 1996.

(Approved June 17, 1996.)

**Note**

1. Should be underscored.

**ACT 223**

S.B. NO. 3110

A Bill for an Act Relating to Employment Security.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that public educational institutions, when trying to expand work-based learning opportunities, are constrained by employers' concerns about liability for students in work sites and the impact of certain labor laws relating to unemployment insurance, temporary disability, occupational safety

and health, and workers' compensation. The legislature in its last session partially addressed this concern by enacting Act 231, Session Laws of Hawaii 1995. Hawaii and all other states are presently committed to a major educational reform movement, which involves establishing statewide, comprehensive school-to-work transition systems. It is an enormous undertaking since it involves providing work-based learning opportunities for all students. Hawaii is expected to receive \$10,200,000 of federal funds over a five-year period under the School-to-Work Opportunities Act, P.L. 103-239, to carry out this reform.

The legislature further finds that employers are concerned with costs associated with work-based learning, especially those incurred through federal and state labor laws. Employers are seeking relief from the costs of the unemployment insurance payroll tax on students taking part in work-based learning. The federal government provides such an exemption in section 3306(c)(10)(C) of the Internal Revenue Code of 1986, as amended.

The purpose of this Act is to:

- (1) Encourage greater employer participation in school-to-work activities by providing employers relief from unemployment insurance payroll taxes assessed for students participating in paid work-based learning situations, by amending section 383-7, Hawaii Revised Statutes, to add student interns to the list of those excluded from the payroll tax, thereby providing the same regulatory relief as federal statutes;
- (2) Authorize the department of labor and industrial relations to provide grants and subsidies for employment, education, and training services, exempt from chapter 42D, Hawaii Revised Statutes; and
- (3) Extend the time period for employment and training fund assessments until December 31, 2000.

SECTION 2. Section 383-7, Hawaii Revised Statutes, is amended to read as follows:

**“§383-7 Excluded service.** “Employment” does not include the following service:

- (1) Agricultural labor as defined in section 383-9 if it is performed by an individual who is employed by an employing unit:
  - (A) Which, during each calendar quarter in both the current and the preceding calendar years, paid less than \$20,000 in cash remuneration to individuals employed in agricultural labor; and
  - (B) Which had, in each of the current and the preceding calendar years:
    - (i) No more than nineteen calendar weeks, whether consecutive or not, in which agricultural labor was performed by its employees; or
    - (ii) No more than nine individuals in its employ performing agricultural labor in any one calendar week, whether or not the same individuals performed the labor in each week;
- (2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority performed in any calendar quarter by an individual if the cash remuneration paid to the individual by an employing unit for the service is less than \$225, and if the total cash remuneration paid to all individuals by an employing unit for the service is less than \$1,000 in each calendar quarter in both the current and preceding calendar years;
- (3) Service not in the course of the employing unit's trade or business performed in any calendar quarter by an individual, unless the cash

remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employing unit to perform the service. For the purposes of this paragraph, an individual shall be deemed to be regularly employed to perform service not in the course of an employing unit's trade or business during a calendar quarter only if:

- (A) On each of some twenty-four days during the quarter the individual performs the service for some portion of the day; or
  - (B) The individual was regularly employed as determined under subparagraph (A) by the employing unit in the performance of the service during the preceding calendar quarter;
- (4) (A) Service performed on or in connection with a vessel not an American vessel, if the individual performing the service is employed on and in connection with the vessel when outside the United States;
- (B) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed as an ordinary incident thereto, except:
- (i) The service performed in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);
  - (ii) The service performed in connection with a vessel of ten net tons or less (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States) by an individual who is employed by an employing unit which had in its employ one or more individuals performing the service for some portion of a day in each of twenty calendar weeks all occurring, whether consecutive or not, in either the current or the preceding calendar year; and
  - (iii) Service performed in connection with the catching or taking of salmon or halibut for commercial purposes;
- (5) Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of the child's father or mother;
- (6) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter, except that to the extent that the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this chapter shall apply to those instrumentalities, and to services performed for those instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided that if this State is not certified for any year by the Secretary of Labor under section 3304(c) of the federal Internal Revenue Code, the payments required of those instrumentalities with respect to that year shall be refunded by the department of labor and industrial relations from the fund in the same manner and within the same period

- as is provided in section 383-76 with respect to contributions erroneously collected;
- (7) Service performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions; and any service performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to the service, exempt from the tax imposed by section 3301 of the Internal Revenue Code of 1954;
  - (8) Service with respect to which unemployment compensation is payable under an unemployment system established by an act of Congress;
  - (9) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the federal Internal Revenue Code (other than an organization described in section 401(a) or under section 521 of [such] the Code), if:
    - (i) The remuneration for the service is less than \$50; or
    - (ii) The service is performed by a fully ordained, commissioned, or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of duties required by the order;
  - (B) Service performed in the employ of a school, college, or university, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university; or
  - (C) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;
  - (10) Service performed in the employ of a foreign government (including service as a consular or other officer or employee of a nondiplomatic representative);
  - (11) Service performed in the employ of an instrumentality wholly owned by a foreign government:
    - (A) If the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and
    - (B) If the United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;
  - (12) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved

- pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;
- (13) Service performed by an individual for an employing unit as an insurance agent or as an insurance solicitor, if all service performed by the individual for the employing unit is performed for remuneration solely by way of commission;
  - (14) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;
  - (15) Service covered by an arrangement between the department and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by the employing unit's duly approved election, are deemed to be performed entirely within the agency's state;
  - (16) Service performed by an individual who, pursuant to the Federal Economic Opportunity Act of 1964, is not subject to the federal laws relating to unemployment compensation;
  - (17) Service performed by an individual for an employing unit as a real estate salesperson, if all service performed by the individual for the employing unit is performed for remuneration solely by way of commission;
  - (18) Service performed by a registered sales representative for a registered travel agency, when the service performed by the individual for the travel agent is performed for remuneration by way of commission;
  - (19) Service performed by a vacuum cleaner salesperson for an employing unit, if all services performed by the individual for the employing unit are performed for remuneration solely by way of commission;
  - (20) Service performed for a family-owned private corporation organized for profit that employs only members of the family who each own at least fifty per cent of the shares issued by the corporation, provided that:
    - (A) The private corporation elects to be excluded from coverage under this chapter;
    - (B) The election for exclusion shall apply to all shareholders and under the same circumstances;
    - (C) No more than two members of a family may be eligible per entity for exclusion under this paragraph;
    - (D) The exclusion shall be irrevocable for five years;
    - (E) The family-owned private corporation presents to the department proof that it has paid federal unemployment insurance taxes as required by federal law; and
    - (F) The election to be excluded from coverage shall be effective the first day of the calendar quarter in which the application and all substantiating documents requested by the department are filed with the department;
- and
- (21) Service performed by a direct seller as defined in section 3508 of the Internal Revenue Code of 1986.

None of the foregoing exclusions (1) to (21) shall apply to any service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state



unemployment fund or which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act is required to be covered under this chapter.”

SECTION 3. Section 383-128, Hawaii Revised Statutes, is amended to read as follows:

“**[[§383-128]] Employment and training fund established.** (a) Effective January 1, 1992, there is established in the state treasury, apart from all other funds in this State, a special fund to be known as the employment and training fund. All assessments collected pursuant to section 383-129 and all other moneys received by the fund from any other source shall be deposited into the employment and training fund.

(b) The moneys in the employment and training fund may be used for funding:

- (1) The operation of the state employment service for which no federal funds have been allocated;
- (2) Business-specific training programs to create a more diversified job base and to carry out the purposes of the new industry training program pursuant to section 394-8;
- (3) Industry or employer-specific training programs where there are critical skill shortages in high growth occupational or industry areas;
- (4) Training and retraining programs to assist workers who have become recently unemployed or likely to be unemployed;
- (5) Programs to assist residents who do not otherwise qualify for federal or state job training programs to overcome employment barriers; and
- (6) Training programs to provide job-specific skills for individuals in need of [such] assistance to improve career employment prospects.

(c) The director may require employers assisted by any of these programs to contribute up to fifty per cent of the cost of such assistance in cash or in-kind contributions.

(d) The department is authorized to provide grants and subsidies to contract for employment, education, and training services from public and private agencies and nonprofit corporations. [These] Grants and subsidies for these services shall be exempt from chapter 42D so funds for these services may be expended in a timely manner to effectuate the purposes of this section. All other disbursements shall be in accordance with chapter 103D.

(e) For purposes of grants and subsidies awarded under subsection (d), any organization requesting a grant or subsidy shall:

- (1) Be licensed and accredited, as applicable, under the laws of the State;
- (2) Have at least one year's experience with the project or in the program area for which the request or proposal is being made; except that the director may grant an exception where the project or program area deals with new industry training; and
- (3) Be, employ, or have under contract persons who are qualified to engage in the program or activity to be funded by the State.

(f) Recipients of grants or subsidies shall be subject to the following conditions:

- (1) Any organization requesting a grant or subsidy shall submit its request together with all the information required by the director on an application form provided by the department;
- (2) The recipient of a grant or subsidy shall not use public funds for purposes of entertainment or perquisites;

- (3) The recipient of a grant or subsidy shall comply with applicable federal, state, and county laws;
- (4) The recipient of a grant or subsidy shall comply with any other requirements the director may prescribe;
- (5) The recipient of a grant or subsidy shall allow the director, the legislative bodies, and the legislative auditor full access to records, reports, files, and other related documents so that the program, management, and fiscal practices of the grant recipient may be monitored and evaluated to assure the proper and effective expenditure of public funds;
- (6) Every grant or subsidy shall be monitored according to rules established by the director to ensure compliance with this section; and
- (7) Any recipient of a grant or subsidy under this section who withholds or omits any material fact or deliberately misrepresents facts to the director or who violates the terms of the recipient's contract shall be in violation of this section and, in addition to any other penalties provided by law, shall be prohibited from applying for a grant or subsidy under this section for a period of five years from the date of termination.

(e) (g) The director shall submit a report to the legislature on the status of the employment and training fund, including expenditures and program results, at least twenty days prior to the convening of each regular legislative session.

(f) (h) The director of finance shall act as the treasurer and custodian of the employment and training fund, invest those moneys in accordance with applicable laws and rules, and disburse the moneys in the employment and training fund in accordance with directions by the director of labor and industrial relations. All interest earned from investment of moneys in the employment and training fund shall be deposited in the fund. The director of finance shall be liable on the director's official bond for the faithful performance of all duties in connection with the employment and training fund. All sums recovered on the surety bond for losses sustained by the employment and training fund shall be deposited in the fund.

(g) (i) Administrative costs for the collection of employment and training fund contributions and for costs related to the establishment and maintenance of the employment and training fund shall be borne by the fund beginning with fiscal year 1992-1993 and thereafter.

(h) (j) The director may establish positions and hire necessary personnel to establish and administer the employment and training fund without regard to chapters 76 and 77."

SECTION 4. Section 383-129, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Effective January 1, 1992, through December 31, [1996,] 2000, in addition to contributions determined by section 383-68, every employer, except an employer who has selected an alternative method of financing liability for unemployment compensation benefits pursuant to section 383-62 or an employer who has been assigned a minimum rate of zero per cent or the maximum rate of five and four-tenths per cent in accordance with section 383-68, shall be subject to an employment and training fund assessment at a rate of .05 per cent of taxable wages as specified in section 383-61."

SECTION 5. All rules adopted by the department of labor and industrial relations as of May 4, 1992, to implement sections 383-128 and 383-129, Hawaii Revised Statutes, shall remain in full force and effect until amended or repealed by

the department of labor and industrial relations pursuant to chapter 91, Hawaii Revised Statutes.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

ACT 224

S.B. NO. 3158

A Bill for an Act Relating to the Insurance Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10 to be appropriately designated and to read as follows:

**“§431:10- Pooled insurance.** (a) Insurers may offer pooled insurance which allows liability insurance and all other types of insurance required by law, not including prepaid health insurance, to be obtained for a construction project. Pooled insurance may be purchased by:

- (1) The State and its public instrumentalities for specific public works construction projects, or any other construction project in the public interest which is publicly financed in whole or in part; or
- (2) A private person or legal entity subject to the State’s tax laws for a specific construction project.

Pooled insurance shall be limited to those construction projects that are estimated to cost \$50,000,000 or more for the total construction project.

(b) For purposes of this section, “pooled insurance” means an insurance policy or policies from licensed private insurers which cover the liability of all developers, contractors, and subcontractors, for their performance directly related to the project. The insurance policy or policies shall cover only a specific public works or private construction project and shall be in effect for the limited period of time required to complete construction of that project; provided that the policy or policies shall cover claims in accordance with the terms of the policy or policies and within the applicable statute of limitations for those claims.

(c) The State, its public instrumentalities, or a private person or entity may obtain a pooled insurance policy or policies and seek contributions or reimbursements of premiums from any contractor or subcontractor who is included as a named insured. In the alternative to the preceding, the State, its instrumentalities, or a private person or entity may arrange a premium payment guarantee from any contractor or subcontractor included as a named insured.

(d) As used in this section, “contractors,” and “subcontractors” do not include architects and engineers.

(e) Nothing in this section shall be construed to alter or nullify the liability of any party to the State for claims arising from a public works construction project.

(f) In cases of conflict with section 386-124, this section shall control.”

SECTION 2. Section 431:14-116.6, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The plan shall provide a formula allowing an insurer who voluntarily removes an insured risk from the residual market to be eligible for a take-out credit applicable against that insurer’s residual market assessment base levied by the plan. The terms and conditions of the take-out credit shall be as follows:

- (1) An insurer shall receive a credit against its assessment base for the amount of the annual premium reflected in its financial statements for the respective calendar year. This reported premium shall be stated on the same financial basis as the premiums that are reported for use in determining each insurer’s residual market assessment base and shall be subject to subsequent adjustments and audits;
- (2) The credit applicable to the residual market assessment base shall be as follows:  
First year: \$2 credit for every \$1 of premium removed;  
Second year: \$1 credit for every \$1 of premium removed; and  
Third year: \$1 for every \$1 of premium removed;
- (3) If the insurer keeps the insured risk out of the residual market for three years, that insurer shall receive credit for each of three years. If the insurer does not write the business for three years, it shall receive credit only for the period of time that it covered the risk in the voluntary market. Under no circumstances shall an insurer receive credit for risks returned to the residual market within one policy year;
- (4) An insurer shall not return an insured taken from the residual market to the residual market after one year of coverage to subsequently reissue insurance to the insured to obtain the higher credit established for the first year of residual market removal in paragraph (2);
- (5) There shall be no maximum limit on credits received; provided that the credits shall not reduce the insurer’s assessment base below zero;
- (6) The kind and amount of coverage to be offered to voluntary risks shall not be less than those afforded by the policy being replaced, unless the kinds and amounts are refused by the insureds; [and]
- (7) The commissioner may approve loss sensitive rating plans for larger companies that generate more than \$150,000 in insurance premiums[.];  
and
- (8) The commissioner may adjust or terminate the credit program depending on market conditions, provided that any adjustment or termination shall not affect any credit earned prior to the adjustment or termination.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 225

S.B. NO. 3159

A Bill for an Act Relating to Insurance, Annuities and Securities Activities of Banks.  
*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 412, Hawaii Revised Statutes, is amended by adding three new sections to article 5 to be appropriately designated and to read as follows:

**“§412:5-A Insurance and annuities powers.** (a) With the prior written approval of the commissioner, and subject to the limitations set forth in this section and section 412:5-B and to any conditions the commissioner may impose, any bank organized under the laws of the State, at the discretion of its board of directors, may transact a business of insurance, including but not limited to making contracts of insurance and selling insurance as general agent, subagent, broker, or solicitor, selling insurance through an independent insurance agent or agency under contract, selling annuities, and engaging in any related or incidental activities, within the State; provided that any insurance activities conducted pursuant to the authority conferred in this subsection shall be governed by and comply with chapter 431 and any insurance administrative rules adopted under chapter 431. Administration of chapter 431 and any insurance administrative rules shall be vested with the insurance commissioner.

(b) With the prior written approval of the commissioner, and subject to the limitations set forth in this section and section 412:5-B and to any conditions the commissioner may impose, any bank organized under the laws of the State, at the discretion of its board of directors, may transact a business of insurance, including but not limited to the making of contracts of insurance and the sale of insurance as general agent, subagent, broker, or solicitor, selling insurance through an independent insurance agent or agency under contract, selling annuities, and engaging in any related or incidental activities, in any places outside this State, including any other states of the United States, dependencies or insular possessions of the United States, or any foreign countries; provided that any insurance activities conducted in this State pursuant to the authority conferred in this subsection shall be governed by and comply with chapter 431 and any insurance administrative rules adopted under chapter 431; provided further that any insurance activities conducted outside the State pursuant to the authority in this subsection shall be governed by and comply with the laws and administrative rules of the state, dependency, insular possession, or foreign country applicable to the conduct of insurance activities within that jurisdiction.

(c) The bank shall file an application for approval with the commissioner in a form prescribed by the commissioner. The application shall be accompanied by a fee the amount of which shall be prescribed by rule. The application shall contain:

- (1) A description of the activities to be conducted;
- (2) The experience and qualifications of the proposed managers;
- (3) The specific location where the activities will be conducted; and
- (4) Any other information that the commissioner may require.

If the bank proposes to engage in the business of insurance through a subsidiary or affiliate, then the application shall also contain information regarding the experience and qualifications of the proposed executive officers and directors of the subsidiary or affiliate and the ownership, amount, and nature of the bank's investment in and advances to the subsidiary or affiliate. Upon being satisfied that the application is complete, that the conduct of the insurance business will not affect the safety or soundness of the bank or harm the public interest, and that the bank and its subsidiary or affiliate, if applicable, have sufficient experience, qualifications, and

financial capability to engage in the activities authorized by this section, the commissioner shall approve the application. The commissioner may impose any terms and conditions which the commissioner considers necessary to protect the bank, the customers of the bank, and the public interest.

(d) Upon receipt of the commissioner's approval under this section, the bank or its subsidiary or affiliate shall obtain any necessary approvals from the insurance commissioner required under chapter 431 and any insurance administrative rules adopted under chapter 431, or the applicable insurance and banking laws of any jurisdiction other than this State in which the bank will be conducting its insurance and annuity activities.

(e) The provisions of this section are in addition to, and not a limitation of, any other provision in this chapter. The powers granted by this section may be exercised notwithstanding any other provision of this chapter. Furthermore, the commissioner may adopt rules governing the exercise of powers granted by this section as the commissioner finds necessary to avoid unsound banking practices, to ensure the safety and soundness of the bank, and to protect the public interest.

**§412:5-B Requirements of banks engaging in insurance activities. (a)**

Pursuant to section 412:5-A a bank may engage in insurance underwriting if the following requirements are met:

- (1) The insurance underwriting activities shall be conducted in a separately capitalized subsidiary of the bank or affiliate of its bank holding company;
- (2) A bank or the bank holding company that controls an insurance underwriting subsidiary shall be subject to article 11, chapter 431, relating to insurance company holding systems;
- (3) The name of the insurance underwriting subsidiary or affiliate and any assumed business name used by it shall not be identical to that of the bank;
- (4) The logo of the insurance underwriting subsidiary or affiliate shall not be identical to that of the bank; and
- (5) In no event shall any liabilities or losses associated with the banking activities of the bank be recoverable through the Hawaii Insurance Guaranty Association, the Hawaii Life and Disability Insurance Guaranty Association, or the insurance guaranty fund of another state.

(b) Pursuant to section 412:5-A, a bank may engage in insurance sales through an independent insurance agent or agency under contract. In addition, a bank may engage in insurance sales pursuant to section 412:5-A, either directly in any department or division of the bank or through a subsidiary or affiliate of the bank, if the following requirements are met:

- (1) The bank is prohibited from offering insurance products at teller stations;
- (2) An agent of the bank or of its subsidiary or affiliate engaged in selling insurance in this State pursuant to section 412:5-A shall be licensed in accordance with article 9, chapter 431;
- (3) The bank or its insurance affiliate or subsidiary shall be subject to article 13, chapter 431, relating to unfair practices;
- (4) The bank or its insurance affiliate or subsidiary shall prominently disclose in writing to customers solicited to purchase non-credit insurance that the insurance offered or sold:
  - (A) Is not a deposit;
  - (B) Is not insured by the Federal Deposit Insurance Corporation; and
  - (C) Is not guaranteed by the bank or an affiliated depository institution.

- (5) The bank or its insurance affiliate or subsidiary shall disclose in writing to customers solicited to purchase annuities that annuities offered or sold when appropriate, involve investment risk, including potential loss of principal.

(c) Upon receipt of the commissioner's approval under section 412:5-A, the bank or its subsidiary or affiliate shall obtain any necessary approvals from the insurance commissioner required under chapter 431 and any insurance administrative rules adopted under chapter 431 or the applicable insurance and banking laws of any jurisdiction other than this State in which the bank will be conducting its insurance and annuity activities.

**§412:5-C Securities powers.** (a) With the prior written approval of the commissioner, and subject to the limitations set forth in this section and to any conditions the commissioner may impose, any bank organized under the laws of the State, at the discretion of its board of directors, either directly in any department or division of the bank or through a subsidiary or affiliate of the bank, may engage in the following securities activities and in any related or incidental activity, within the State:

- (1) Sale or purchase of any security on the order of and for the account of customers, either alone or in conjunction with the rendering of investment advice to customers, through the operations, respectively, of a discount or full service brokerage;
- (2) Organization, sponsorship, operation, control, and distribution of one or more investment companies, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3) or in the laws of the jurisdiction in which investment company operates;
- (3) Provision of portfolio advice to customers;
- (4) Provision of investment and financial advice to government agencies; and
- (5) Service as dealer-manager or financial advisor to corporations, partnerships, or other persons, including but not limited to, the provision of valuation advice and opinions with respect to sales or purchases of assets, corporate restructurings, issuances of securities, mergers, and other acquisitions.

The exercise of authority conferred in this subsection shall be governed by and comply with chapter 485 and any securities administrative rules adopted under chapter 485. Administration of chapter 485 and any securities administrative rules shall be vested with the commissioner of securities.

(b) With the prior written approval of the commissioner, and subject to the limitations set forth in this section and to any conditions the commissioner may impose, any bank organized under the laws of the State, at the discretion of its board of directors, either directly in any department or division of the bank or through a subsidiary or affiliate thereof, may engage in the following securities activities and in any related or incidental activities, in any place outside this State, including any other state of the United States, dependencies or insular possession of the United States, or any foreign countries:

- (1) Sale or purchase of any security, as defined under applicable law, on the order of and for the account of customers, either alone or in conjunction with the rendering of investment advice to customers, through the operations, respectively, of a discount or full service brokerage;
- (2) Organization, sponsorship, operation, control, and distribution of one or more investment companies, as defined in section 3 of the Invest-

ment Company Act of 1940 (15 U.S.C. 80a-3) or as otherwise defined under applicable law;

- (3) Provision of portfolio advice to customers;
- (4) Provision of investment and financial advice to government agencies; and
- (5) Service as dealer-manager or financial advisor to corporations, partnerships, or other persons, including but not limited to, the provision of valuation advice and opinions with respect to sales or purchases of assets, corporate restructurings, issuances of securities, mergers, and other acquisitions.

The exercise of authority conferred in this subsection shall be governed by and comply with chapter 485 and any securities rules adopted under chapter 485 or the laws and administrative rules of the state, dependency, insular possession, or foreign country applicable to the conduct of such securities activities within that jurisdiction.

(c) The bank shall file an application for approval with the commissioner in a form prescribed by the commissioner. The application shall be accompanied by a fee the amount of which shall be prescribed by rule. The application shall contain:

- (1) A description of the activities to be conducted;
- (2) The experience and qualifications of the proposed managers;
- (3) The specific location where the activities will be conducted; and
- (4) Any other information that the commissioner may require.

If the bank proposes to engage in securities activities through a subsidiary or affiliate, then the application shall also contain information regarding the experience and qualifications of the proposed executive officers and directors of the subsidiary or affiliate and the ownership, amount, and nature of the bank's investment in and advances to the subsidiary or affiliate. Upon being satisfied that the application is complete, that the conduct of the securities activities will not affect the safety or soundness of the bank or harm the public interest, and that the bank and its subsidiary or affiliate, if applicable, have sufficient experience, qualifications, and financial capability to engage in the activities authorized by this section, the commissioner shall approve the application. The commissioner may impose any terms and conditions which the commissioner considers necessary to protect the bank, the customers of the bank, and the public interest.

(d) Upon receipt of the commissioner's approval under this section, the bank or its subsidiary or affiliate shall obtain any necessary approvals required under chapter 485 and any securities administrative rules adopted under chapter 485 or the applicable securities and banking laws of the jurisdiction in which it will be conducting its securities activities.

(e) The provisions of this section are in addition to and not in limitation of any other provision of this chapter. The powers granted by this section may be exercised notwithstanding any other provision of this chapter. Furthermore, the commissioner may adopt rules governing the exercise of powers granted by this section as the commissioner finds necessary to avoid unsound banking practices, to ensure the safety and soundness of the bank, and to protect the public interest."

SECTION 2. Section 412:5-200, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Except as otherwise expressly authorized by this chapter or by the commissioner under section 412:5-201, a bank shall not:

- (1) Employ its funds, directly or indirectly, in trade or commerce, by buying or selling ordinary goods, chattels, wares, and merchandise, or by owning or operating industrial or manufacturing plants of any kind;



- (2) Own or control the capital stock of any other corporation;
- (3) Make loans and extensions of credit secured by its own capital stock, except in cases where the taking of the security is necessary to prevent loss upon an indebtedness previously contracted in good faith;
- (4) Make loans and extensions of credit secured by the capital stock of another bank, if by making the loan the total capital stock of the other bank held by the lending bank as collateral would exceed in the aggregate fifty per cent of the capital stock of the other bank; or
- (5) Engage in any business for which a real estate broker's license is required[, in any business for which an insurance agent or agency license is required, or in any business of a securities broker or dealer. This prohibition shall not apply to the sale of credit life and other forms of credit related insurance products and shall not affect previous licenses or approvals granted to sell securities or non-credit related forms of insurance]."

SECTION 3. Section 412:5-305, Hawaii Revised Statutes is amended by amending subsection (g) to read as follows:

- “(g) A bank may own or control the capital stock:
- (1) Of operating subsidiaries as set forth in this article;
  - (2) Of a corporation organized and existing for the ownership of real or personal property used or which the bank in good faith expects to be used in the bank's business;
  - (3) Of the Federal National Mortgage Association, the Student Loan Marketing Association, Federal Home Loan Mortgage Corporation, or of any other corporation organized for substantially the same purposes; provided that this subsection shall be deemed to authorize subscription for as well as purchase of the stock;
  - (4) Of small business investment companies operating under the Federal Small Business Investment Act of 1958;
  - (5) Of bank service corporations, subject to [the provisions of] the Bank Service Corporation Act, 12 U.S.C. §§1861-1862;
  - (6) Of a corporation whose stock is acquired or purchased to save a loss on a preexisting debt secured by such stock; provided, that the stock shall be sold within twelve months of the date acquired or purchased, or within such further time as may be granted by the commissioner;
  - (7) Of an international banking corporation established pursuant to article 5A of this chapter or an Edge corporation or an Agreement corporation established or authorized pursuant to section 25a of the Federal Reserve Act, 12 U.S.C. §631; [and]
  - (8) Of a captive insurance company incorporated under the laws of the United States, or any state or territory thereof, or the District of Columbia[.];
  - (9) Of a company transacting a business of insurance or the sale of annuities pursuant to the authority conferred in section 412:5-A; and
  - (10) Of a company engaging in securities activities pursuant to the authority conferred in section 412:5-C.”

SECTION 4. Section 431:13-104, Hawaii Revised Statutes, is amended to read as follows:

“**§431:13-104 Favored agent or insurer; coercion of debtors.** (a) No person may require as a condition precedent to the lending of money or extension of

credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance, negotiate any contract of insurance, or renewal thereof, through a particular insurer or group of insurers or agent or broker or group of agents or brokers.

(b) No person who lends money or extends credit may:

- (1) Solicit insurance [for the protection of real property], after a person indicates interest in securing a [first mortgage] loan or credit extension, until such person has received a commitment in writing from the lender as to a loan or credit extension[;]. The requirement for a commitment shall not apply in cases where the premium for the required insurance is to be financed as part of the loan or extension of credit involving personal property transactions;
- (2) Unreasonably reject a contract of insurance furnished by the borrower [for the protection of the property securing the credit or lien.] where insurance is required by the loan or credit transaction. A rejection shall not be deemed unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for rejection of an insurance contract because the contract contains coverage in addition to that required in the loan or credit transaction;
- (3) Require that any borrower, mortgagor, purchaser, insurer, broker, or agent pay a separate charge, in connection with the handling of any contract of insurance required [as security for a loan on real estate,] by the loan or credit transaction, or pay a separate charge to substitute the insurance policy of one insurer for that of another. This paragraph does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document;
- (4) Use or disclose[, without the prior written consent of the borrower, mortgagor or purchaser taken at a time other than the making of the loan or extension of credit,] information relative to a contract of insurance which is required by, or supplied in response to, the loan or credit transaction, for the purpose of replacing the insurance[;] or soliciting insurance;
- (5) Require any procedures or conditions of duly licensed agents, brokers, or insurers not customarily required of those agents, brokers, or insurers affiliated or in any way connected with the person who lends money or extends credit.

(c) Every person who lends money or extends credit and who solicits insurance [on real and personal property] subject to subsection (b) must explain to the borrower in writing that the insurance related to such credit extension may be purchased from an insurer or agent of the borrower's choice, subject only to the lender's right to reject a given insurer or agent as provided in subsection (b)(2). Compliance with disclosures as to insurance required by Truth-In-Lending laws or comparable state laws shall be in compliance with this paragraph.

[This requirement for a commitment shall not apply in cases where the premium for the required insurance is to be financed as part of the loan or extension of credit involving personal property transactions.]

(d) The commissioner shall have the power to examine and investigate those insurance related activities of any person whom the commissioner believes may be in violation of this section. Any affected person may submit to the commissioner a complaint or material pertinent to the enforcement of this section.

(e) Nothing in this section shall prevent a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(f) Nothing contained in this section shall apply to credit life or credit disability insurance.

(g) Nothing in this section shall prevent a person who lends money or extends credit from assisting a mortgagor, borrower, or purchaser in obtaining homeowners insurance where the borrower requests such assistance in writing. Nothing in this section shall prevent a person who lends money or extends credit from referring a mortgagor, borrower, or purchaser to the Hawaii hurricane relief fund.

(h) The commissioner shall adopt rules to prevent any bank, or subsidiary or affiliate thereof, which is engaged in insurance activities, from draining assets to the detriment of the insurance operations; and shall also adopt rules to obtain diverted assets from the bank, subsidiary, or affiliate in the case of insolvency of the insurance operation.’’

SECTION 5. In codifying the new sections added to chapter 412, article 5, Hawaii Revised Statutes, by section 1 of this Act, and referenced in sections 3 and 7 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating new sections.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 7. (a) This Act shall take effect upon its approval; provided that the power of a bank to:

- (1) Directly sell insurance in this State other than through a subsidiary or affiliate of the bank or through an independent insurance agent or agency under contract; and
  - (2) Underwrite insurance in this State;
- pursuant to the authority conferred in sections 412:5-A and 412:5-B, Hawaii Revised Statutes, shall become effective on June 1, 2000.

(b) After May 31, 2000, in addition to sales through a subsidiary, affiliate, or independent insurance agent or agency, a bank may sell insurance directly through a division or department of the bank and on branch premises:

- (1) At no more than twenty-five per cent of all of its State of Hawaii branches between June 1, 2000, and May 31, 2001;
- (2) At no more than fifty per cent of all of its State of Hawaii branches between June 1, 2001, and May 31, 2002; and
- (3) At no more than seventy-five per cent of all of its State of Hawaii branches between June 1, 2002, and May 31, 2003.

After May 31, 2003, there shall be no restrictions on the number of State of Hawaii branches from which banks may be permitted to directly sell insurance on branch premises through a division or department of the bank.

(Approved June 17, 1996.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Court Reporters.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 606, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**“§606- Definitions.** As used in this chapter, unless the context indicates otherwise:

“Certified shorthand reporter” means a shorthand reporter certified by the Hawaii supreme court through the Hawaii board of certified shorthand reporters.

“Official court reporter” means a certified shorthand reporter employed by the courts of the State to provide court reporting services.

“Private court reporter” means a certified shorthand reporter who offers services on a freelance basis and who is not employed by the courts of the State.

**§606- Private court reporters; contracts.** (a) Any contract for private court reporting services, not related to a particular case or reporting incident, shall be prohibited between a private court reporter or any other person with whom a private court reporter has a principal and agency relationship, and any attorney, party to an action, party having a financial interest in an action, or any entity providing the services of a certified shorthand reporter. Negotiating or bidding reasonable fees, equal to all parties, on a case-by-case basis may not be prohibited.

(b) Violation of this section shall be grounds for discipline, censure, or suspension or revocation of licensure.

**§606- Official court reporters’ notes; ownership.** All official court reporters’ notes shall be the property of the State.”

SECTION 2. Section 606-12, Hawaii Revised Statutes, is amended to read as follows:

**“§606-12 Duties of official court reporters.** The duties of each official court reporter shall be to attend [upon] sessions of the court and [write down all] take verbatim notes of all oral proceedings before the court, including the testimony of witnesses [in shorthand, together with the proceedings and], objections of counsel, [exclusive of argument, the] offers of proof, arguments of counsel, rulings of the court, charge to the jury, verdict of the jury, and any other matter which the court may require the official court reporter to report. The official court reporter may be called upon at any time during a hearing, by any party to the same or by the court, to read aloud any portion of the official court reporter’s notes theretofore taken by the official court reporter. The official court reporter may be referred to at any time by the clerk of the court for the exact language of any orders from the bench. In any hearing of probate of will or administration matter the judge may, in the judge’s discretion, order the official court reporter to supply and file, without charge and within a reasonable time, a certified statement of such testimony as relates to the names, ages, and genealogies of heirs. Other appropriate duties for the official court reporters to perform may be prescribed by rule of court.

Each official court reporter shall file the official court reporter’s [shorthand] notes in a suitable filing case provided for that purpose, and, when requested by any party to a cause and so directed by the court, or by the court of its own motion, shall, within [such] a reasonable time thereafter as the court may designate, furnish a

certified transcript of the official court reporter's notes, or any portion thereof, taken in the cause, upon the payment of the fee fixed in section 606-13. The official court reporter may furnish a transcript of any of the official court reporter's notes, where the same is not intended for the purposes of appeal to the supreme court, upon the request of any party, without the order of the judge therefore first obtained.

In an ex parte or uncontested case if there is no official court reporter in attendance, the court may direct the clerk to take notes of the oral evidence adduced or the judge may [oneself] personally take [such] notes or may cause the oral evidence to be preserved on tape or by another mechanical device."

SECTION 3. Section 606-13, Hawaii Revised Statutes, is amended to read as follows:

**"§606-13 Salary and perquisites of official court reporters.** Each official court reporter shall receive for [his] services as prescribed in section 606-12 the salary that may be appropriated from time to time as compensation for [his] the official court reporter's services in court. [He may also charge for his services a fee not to exceed \$1.50 per twenty-five line page for the original ribbon copy of transcripts of testimony and proceedings and 60 cents per twenty-five line page for each carbon copy thereof made at the same time when such transcripts are prepared in their regular order for the purposes of appeal to the supreme court and a fifty per cent additional fee for expedited service when transcripts are prepared during the course of a trial.] Each official court reporter may charge and collect fees for transcripts requested by the parties, including state courts, pursuant to rules promulgated by the supreme court through its rule making authority. The fees for transcripts ordered by a party shall be paid by the party ordering the same and, except in the case of the attorney general, the public defender, or the county or prosecuting attorneys or corporation counsels, no official court reporter shall be required to perform any such service until [his] the fees have been paid or the amount of the estimated cost of the fees deposited with the clerk of the court.

Where the court, of its own motion, orders a transcript to be prepared of the whole or any part of the testimony in a civil cause, it may, in its discretion, direct the payment of the charges therefor, and the taxation of the same as costs, in such manner as to it may seem just. Where the attorney general, the public defender, or the county or prosecuting attorney or corporation counsel, desires transcripts for [his own] official use, either original or [carbon] copy, the official court reporter may be paid for same by warrant upon the treasury of the State or county, as the case may be.

[When a transcript is prepared from a tape, or other record of the testimony and proceedings made by a mechanical device, the transcript fees shall be those applicable when a transcript is prepared by an official court reporter from his notes. A transcript not prepared by an official court reporter shall be certified by a clerk of the court.

The reporter] Official court reporters or other [person] persons preparing transcripts shall provide, at [his] their own expense, all [typewriting paper and carbon paper necessary] supplies directly related to the preparation thereof."

SECTION 4. Section 606-9, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 606-10, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 606-11, Hawaii Revised Statutes, is repealed.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect on July 1, 1996.

(Approved June 17, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 227

S.B. NO. 3231

A Bill for an Act Relating to the Taxation of Real Property by the Counties.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 246A-2, Hawaii Revised Statutes, is amended to read as follows:

“**[§246A-2] Transfer of functions.** [Effective July 1, 1981, the] The functions, powers, duties, and authority heretofore exercised by the department of taxation relating to the taxation of real property shall be exercised by the respective counties, except the [County] county of Kalawao, as provided by [Article] article VIII, [Section] section 3, of the [State Constitution.] state constitution:

- (1) For a period of eleven years commencing November 7, 1978, the counties shall, by majority agreement of the counties, provide for uniform policies and methods of assessment for the taxation of all real property throughout the State. [Such] The policies and methods shall include [but not be limited to] the assessment, levy, and collection of real property taxes. Upon agreement of the uniform policies and methods to be used for the taxation of all real property, each county shall [thereafter] adopt by ordinance such uniform policy and method of assessment as the real property tax law of the county. In the event the counties cannot agree as to what shall be the uniform policy and method of assessment or should any or all of the counties fail to enact [such] the ordinance, the legislature shall by general law provide for a uniform method of assessment of real property taxes throughout the State. Amendments to [such] the uniform policies and methods adopted by the counties may be made by majority agreement of the counties and subsequent enactment thereof by ordinance[.];
- (2) Each county shall enact by ordinance and adopt as law for the county all of the real property tax exemptions, and the provisions for the dedication of lands for specific use and the assessment of such lands at its value in such use as now provided by law. [These] Notwithstanding any other provisions of this chapter, the counties shall not diminish or repeal the exemption existing on November 1, 1989, for real property under lease to the State under which lease the lessee is required to pay the taxes on the property. The remaining exemptions and dedications shall continue undiminished for a period of eleven years commencing November 7, 1978. The counties may by majority agreement of the counties and subsequent enactment by ordinance enlarge, add to, increase, or provide for new exemptions or dedications of lands. The enlargement, addition to, or creation of new exemptions or dedications may be amended by majority agreement of all the counties and subsequent enactment thereof by ordinance; provided that any such amendment shall not in any way diminish the exemption or dedication that was in force on November 7, 1978[.]; and

- (3) Each of the counties, with the exception of the [County] county of Kalawao, shall succeed to all of the rights and powers previously exercised, and all of the duties and obligations incurred by the department of taxation in the exercise of the functions, powers, duties, and authority transferred, whether [such] the functions, powers, duties, and authority are mentioned in or granted by any law, contract, or other document. The powers included [herein] in this section shall include the authority to place liens on property with delinquent taxes, provide for the issuance of subpoenas to enforce the real property tax law, and pursue the enforcement of the real property tax law through the tax appeal court or any court of competent jurisdiction. Each county [shall have the power to] may determine real property tax rates by resolution under procedures defined in the real property tax ordinance of the county. All references in any such law, contract, or document to the department of taxation, such as dedication agreements, collection and payment agreements, or exemptions, shall apply to the respective counties, as if each of the respective counties, with the exception of the [County] county of Kalawao, were specifically named in [such] the law, contract, or document in place of the department of taxation."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval; provided that the new sentence added to paragraph (2) of section 1 of the Act shall be repealed one year after the effective date of the Act.

(Approved June 17, 1996.)

## ACT 228

H.B. NO. 3789

A Bill for an Act Relating to Public Contracts.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that Hawaii's unique volcanic soil and rich organic matter provide the perfect medium for the cultivation of agricultural as well as horticultural species throughout the State. Locally-manufactured soil enhancement products, such as compost, green manures, and other organic mixtures, offer superior growth properties such as unparalleled fertility and excellent drainage capacity. Free of foreign insects, weeds, and other potentially harmful pathogens, these products are the logical choice for growers concerned about preserving Hawaii's unique native plant species and environment. The legislature finds that a policy to require state agencies to utilize locally-manufactured soil enhancement products is entirely consistent with the State's objective to protect Hawaii's native plant species and environment.

The legislature further finds that state procurement law establishes an incentive for bidders competing for public contracts to diligently pay their state taxes. The preference is necessary because of the fact that firms who consistently pay their taxes are often placed at a disadvantage to those who have not made payments. To enhance the effectiveness of this incentive, this Act also strengthens the qualifying standards of this provision.

SECTION 2. Section 103D-1002, Hawaii Revised Statutes, is amended to read as follows:

**“[§103D-1002] Hawaii products.** (a) In any expenditure of public funds, a purchasing agency shall review all purchase specifications in a bid or proposal for purchase from the Hawaii products list where these products are available; provided that the products:

- (1) Meet the minimum specifications and the selling price f.o.b. jobsite;
- (2) Unloaded including applicable general excise tax and use tax does not exceed the lowest delivered price in Hawaii f.o.b. jobsite; and
- (3) Unloaded, including applicable general excise tax and use tax do not exceed the lowest delivered price of a similar non-Hawaii product by more than:
  - (A) Three per cent where class I Hawaii products are involved;
  - (B) Five per cent where class II Hawaii products are involved; or
  - (C) Ten per cent where class III Hawaii products are involved.

(b) Where a package bid or offer contains both Hawaii and non-Hawaii products, then for the purpose of selecting the lowest bid or purchase price only, the price bid or offered for a non-Hawaii product item shall be increased by adding thereto: three per cent, five per cent, or ten per cent where similar class I, class II, or class III Hawaii product items have been bid or offered by another party pursuant to this section. The lowest total bid or offer, taking the preferences into consideration, shall be awarded the contract unless the bid or offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the bid or price offered, exclusive of the preferences.

(c) All persons submitting bids or offers based on non-Hawaii products to any purchasing agency shall designate in their bids which individual product is to be supplied as a non-Hawaii product. All bidders shall list the price of the non-Hawaii product in their bid.

(d) In all public works and any repair or maintenance contracts, a purchasing agency or any person employed by a purchasing agency, including architects and engineers, shall describe in all specifications, products, and their established classes listed in the Hawaii products list established under this section which may be used, where the products are available and meet the minimum specifications.

(e) The policy office shall adopt rules in accordance with chapter 91 for the establishment and administration of a Hawaii products list. Upon receipt and approval of application for Hawaii products preference, the administrator shall include within the Hawaii products list, the names of producers and manufacturers in the State who are authorized to supply locally manufactured soil enhancement products to state agencies under subsection (i). The administrator of the state procurement office shall maintain and distribute copies of the list to the purchasing agencies of the various governmental agencies.

(f) This section shall not apply whenever its application will disqualify any governmental agency from receiving federal funds or aid.

(g) Any purchase made or any contract awarded or executed in violation of this section shall be void and no payment shall be made by any purchasing agency on account of the purchase or contract.

(h) Any person, or any officer or employee of any person, who violates this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both. In addition, any person who is awarded a contract or given an order for purchase as a result of misrepresentation in the person's bid or offer or makes a claim in the person's bid or offer that the person will purchase Hawaii products, but fails to do so:



- (1) Shall be fined the difference between the price the person would have paid for Hawaii products and the actual price; and
- (2) Shall not be awarded any contract or be given any order for purchase or be eligible for bidding until one year after the date of the payment of fines.

(i) For the purposes of this section, “soil enhancement product” means any nonchemical soil preparation, conditioner, or compost mixture designed to supplement aeration or add organic, green waste, or decaying matter to the soil; provided that the term does not include any plant fertilizer intended to stimulate or induce plant growth through chemical means. All state agencies shall include in their solicitations, when required, the soil enhancement products identified on the Hawaii products list pursuant to subsection (e).”

SECTION 3. Section 103-45.5, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) In any contract for a public works project, a state agency shall award the contract to a bidder who has filed State of Hawaii employment, general excise, and income tax returns and has paid all amounts owing on such returns for [two] four successive years prior to submitting the bid; provided that the amount of that bid is not more than [five] fifteen per cent higher than the amount bid by any competing contractor who has not filed or paid State of Hawaii taxes as specified, and the amount of the bid by the state tax paying bidder is \$5,000,000 or less.

(d) In any contract for a public works project, a state agency shall award the contract to a bidder who has filed State of Hawaii employment, general excise, and income tax returns and has paid all amounts owing on such returns for [four] eight successive years prior to submitting the bid; provided that the amount of that bid is not more than [five] fifteen per cent higher than the amount bid by any competing contractor who has not filed or paid State of Hawaii taxes as specified, and the amount of the bid by the state tax paying bidder is more than \$5,000,000.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 229

H.B. NO. 44

A Bill for an Act Relating to State Bonds.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to the clause in article VII, section 13 of the state constitution, which states: “Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance,” the legislature finds and declares as follows:

- (1) Limitation on general obligation debt. The debt limit of the State is set forth in article VII, section 13 of the state constitution, which states in part: "General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half per cent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance." Article VII, section 13, also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including "reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year" and bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under said article VII, section 13.
- (2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 1995-1996 and estimated for each fiscal year from 1996-1997 to 1998-1999, is as follows:

Fiscal Year	Net General Fund Revenues	Debt Limit
1992-1993	\$2,801,180,523	
1993-1994	3,054,307,502	
1994-1995	2,932,879,814	
1995-1996	2,963,107,000	\$541,949,350
1996-1997	3,078,278,000	551,934,816
1997-1998	3,226,058,000	553,412,997
1998-1999	(Not Applicable)	571,492,318

For fiscal years 1995-1996, 1996-1997, 1997-1998, and 1998-1999 respectively, the debt limit is derived by multiplying the average of the net general fund revenues for the three preceding fiscal years by eighteen and one-half per cent. The net general fund revenues for fiscal years 1992-1993, 1993-1994, and 1994-1995 are actual, as certified by the director of finance in the Statement of the Debt Limit of the State of Hawaii as of July 1, 1995, dated November 29, 1995. The net general fund revenues for fiscal years 1995-1996 to 1997-1998 are estimates, based on general fund revenue estimates made as of March 15, 1996, by the council on revenues, the body assigned by article VII, section 7 of the state constitution, to make such estimates, and based on estimates made by the department of budget and finance of those receipts which cannot be included as general fund revenues for the purpose of calculating the debt limit, all of which estimates the legislature finds to be reasonable.

- (3) Principal and interest on outstanding bonds applicable to the debt limit. (A) According to the department of budget and finance, the total amount of principal and interest on outstanding general obligation bonds, after the exclusions permitted by article VII, section 13 of the state constitution, for determining the power of the State to issue general obligation bonds within the debt limit as of April 1, 1996, is as follows for fiscal year 1996-1997 to fiscal year 2002-2003:

Fiscal Year	Principal And Interest
1996-1997	\$384,326,661
1997-1998	371,191,347
1998-1999	354,289,172
1999-2000	338,324,888
2000-2001	288,622,841
2001-2002	271,828,371
2002-2003	260,058,058

The department of budget and finance further reports that the amount of principal and interest on outstanding bonds applicable to the debt limit generally continues to decline each year from fiscal year 2003-2004 to fiscal year 2015-2016 when the final installment of \$11,547,456 shall be due and payable. (B) The department of budget and finance further reports that the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$152,000,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to article VII, section 13 of the state constitution.

- (4) Amount of authorized and unissued general obligation bonds and guaranties and proposed bonds and guaranties. (A) As calculated from the state comptroller's bond fund report as of February 29, 1996, adjusted for (1) the issuance of \$100,000,000 in general obligation bonds of 1996, Series CL, (2) appropriations to be funded by general obligation bonds as provided in Act 218, Session Laws of Hawaii 1995 (General Appropriations Act of 1995), to be expended in fiscal year 1996-1997, (3) appropriations to be funded by general obligation bonds as provided in Act 9, Special Session Laws of Hawaii 1995 (Relating to Education), to be expended in fiscal year 1996-1997, (4) appropriations to be funded by general obligation bonds as provided in Act 14, Special Session Laws of Hawaii 1995 (Relating to Hawaiian Home Lands), to be expended in fiscal year 1996-1997, (5) appropriations to be funded by reimbursable general obligation bonds as provided in Act 17, Special Session Laws of Hawaii 1995 (Relating to the Hawaii Hurricane Relief Fund), to be expended in fiscal year 1996-1997, (6) lapses identified in letters dated March 4, 1996 from the director of finance to the chairperson of the senate committee on ways and means and to the chairperson of the house committee on finance amounting to \$4,283,829, (7) lapses identified in letters dated March 22, 1996, from the governor to the president of the senate and the speaker of the house of representatives amounting to \$4,482,791, (8) lapses identified in letters dated April 19, 1996, from the governor to the chairperson of the senate committee on ways and means and to the chairperson of the house committee on finance amounting to \$106,130, (9) lapses as

provided in House Bill No. 3650, H.D. 1, S.D. 1, C.D. 1<sup>1</sup> (the Judiciary Supplemental Appropriations Act of 1996) amounting to \$812,650, and (10) lapses as provided in House Bill No. 2800, H.D. 1, S.D. 1, C.D. 1<sup>2</sup> (the Supplemental Appropriations Act of 1996) amounting to \$103,507,332, the total amount of authorized but unissued general obligation bonds is \$1,143,779,975. The total amount of general obligation bonds authorized by this Act is \$134,282,000. The total amount of general obligation bonds previously authorized and unissued and the general obligation bonds authorized by this Act is \$1,278,061,975. (B) As reported by the department of budget and finance, the outstanding principal amount of bonds constituting instruments of indebtedness under which the State may incur a contingent liability as a guarantor is \$152,000,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to article VII, section 13 of the state constitution. The additional amount of guaranties authorized by House Bill No. 3453, H.D. 1<sup>3</sup> (Relating To The Hawaiian Homes Commission Act, 1920 As Amended) is \$29,000,000 and is herein validated. The total amount of guaranties previously authorized and guaranties validated by this Act is \$181,000,000.

- (5) Proposed general obligation bond issuance. As reported herein for fiscal years 1995-1996, 1996-1997, 1997-1998, and 1998-1999, the State proposes to issue \$200,000,000 during the remainder of fiscal year 1995-1996, \$233,000,000 during the first half of fiscal year 1996-1997, \$449,000,000 during the second half of fiscal year 1996-1997 and \$100,000,000 semiannually in each of fiscal years 1997-1998 through 1998-1999. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the third year, the bonds maturing in substantially equal installments of principal, and interest payments commencing six months from the date of issuance and being paid semiannually thereafter. It is assumed that this practice will continue to be applied to the bonds which are proposed to be issued.
- (6) Sufficiency of proposed general obligation bond issuance to meet the requirements of authorized and unissued bonds, as adjusted, and bonds authorized by this Act. From the schedule reported in paragraph (5), the total amount of general obligation bonds which the State proposes to issue during the fiscal years 1995-1996 to 1997-1998 is \$1,082,000,000. An additional \$200,000,000 is proposed to be issued in fiscal year 1998-1999. The total amount of \$1,082,000,000 which is proposed to be issued through fiscal year 1997-1998 is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, and the bonds authorized by this Act, the total amount of which is \$1,278,061,975, as reported in paragraph (4), except for \$196,061,975. It is assumed that the appropriations to which an additional \$196,061,975 in bond issuance needs to be applied will have been encumbered as of June 30, 1998. The \$200,000,000 which is proposed to be issued in fiscal year 1998-1999 will be sufficient to meet the requirements of the June 30, 1998 encumbrances in the amount of \$196,061,975. The amount of assumed encumbrances as of June 30, 1998, is reasonable and conservative, based upon an inspection of June 30 encumbrances of the general obligation bond fund as reported by the state comptroller. Thus, taking into account the amount of authorized and unissued bonds, as adjusted, and the bonds autho-

rized by this Act versus the amount of bonds which is proposed to be issued by June 30, 1998, and the amount of June 30, 1998 encumbrances versus the amount of bonds which is proposed to be issued in fiscal year 1998-1999, the legislature finds that in the aggregate, the amount of bonds which is proposed to be issued is sufficient to meet the requirements of all authorized and unissued bonds and the bonds authorized by this Act.

- (7) Bonds excludable in determining the power of the State to issue bonds. As noted in paragraph (1), certain bonds are excludable in determining the power of the State to issue general obligation bonds. (A) General obligation reimbursable bonds can be excluded under certain conditions. It is not possible to make a conclusive determination as to the amount of reimbursable bonds which are excludable from the amount of each proposed bond issue because:
- (i) It is not known exactly when projects for which reimbursable bonds have been authorized in prior acts and in this Act will be implemented and will require the application of proceeds from a particular bond issue; and
  - (ii) Not all reimbursable general obligation bonds may qualify for exclusion.

However, the legislature notes that with respect to the principal and interest on outstanding general obligation bonds, according to the department of budget and finance, the average proportion of principal and interest which is excludable each year from the calculation against the debt limit is 7.4 per cent for the ten years from fiscal year 1996-1997 to fiscal year 2005-2006. For the purpose of this declaration, the assumption is made that five per cent of each bond issue will be excludable from the debt limit, an assumption which the legislature finds to be reasonable and conservative. (B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor can be excluded but only to the extent the principal amount of such guaranties does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of paragraph (7) and provided that the State shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State as provided by law. According to the department of budget and finance and the assumptions presented herein, the total principal amount of outstanding general obligation bonds and general obligation bonds proposed to be issued, which are not otherwise excluded under article VII, section 13 of the state constitution, for the fiscal years 1995-1996, 1996-1997, 1997-1998 and 1998-1999 are as follows:

Fiscal Year	Total Amount Of General Obligation Bonds Not Otherwise Excluded By Article VII, Section 13 Of The State Constitution
1995-1996	\$2,878,170,545
1996-1997	3,281,700,976
1997-1998	3,223,724,034
1998-1999	3,165,436,529

Based on the foregoing and based on the assumption that the full amount of a guaranty is immediately due and payable when such guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which does not exceed seven per cent of the average amount set forth in the last column of the above table and for which reserve funds have been or will have been established as heretofore provided, can be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to an actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all guaranties not otherwise excluded pursuant to article VII, section 13 of the state constitution, will become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on such assumptions and on the determination in paragraph (8), all of the outstanding guaranties and the guaranties proposed to be incurred can be excluded.

- (8) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that all of the bonds identified in paragraph (5) will be issued at an interest rate of 6.75 per cent through June 30, 1997 and at 6.5 per cent thereafter, it can be determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, general obligation bonds and instruments of indebtedness under which the State incurs a contingent liability as a guarantor authorized in this Act, will not cause the debt limit to be exceeded at the time of such issuance:

Time Of Issuance And Amount To Be Counted Against Debt Limit	Debt Limit At Time Of Issuance	Greatest Amount And Year Of Highest Principal And Interest On Bonds And Guaranties
Remainder of FY 1995-1996 \$190,000,000	\$541,949,350	\$397,151,661 (1996-1997)
1st half FY 1996-1997 221,350,000	551,934,816	398,957,472 (1997-1998)
2nd half FY 1996-1997 426,550,000	551,934,816	440,305,607 (1999-2000)
1st half FY 1997-1998 95,000,000	553,412,997	446,480,607 (1999-2000)
2nd half FY 1997-1998 95,000,000	553,412,997	452,655,607 (1999-2000)
1st half FY 1998-1999 95,000,000	571,492,318	458,830,607 (1999-2000)

2nd half

FY 1998-1999

95,000,000

571,492,318

465,005,607 (1999-2000)

- (9) Overall and concluding finding. From the facts, estimates, and assumptions stated in this declaration of findings, the conclusion is reached that the total amount of principal and interest estimated for the general obligation bonds authorized in this Act, and for all bonds authorized and unissued, and calculated for all bonds issued and outstanding, and all guaranties, will not cause the debt limit to be exceeded at the time of issuance.

SECTION 2. The legislature finds the bases for the declaration of findings set forth in this Act reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds which will be issued, the amount of principal and interest on reimbursable general obligation bonds which are assumed to be excludable, and the assumed maturity structure shall not be deemed to be binding, it being the understanding of the legislature that such matters must remain subject to substantial flexibility.

SECTION 3. Authorization for issuance of general obligation bonds. General obligation bonds may be issued as provided by law in an amount that may be necessary to finance projects authorized in House Bill No. 2800, H.D. 1, S.D. 1, C.D. 1<sup>2</sup> (the Supplemental Appropriations Act of 1996), House Bill No. 3650, H.D. 1, S.D. 1, C.D. 1<sup>1</sup> (the Judiciary Supplemental Appropriations Act of 1996), House Bill No. 3540, H.D. 1<sup>4</sup> (Relating to Public Safety), and House Bill No. 3383<sup>5</sup> (Authorizing the Issuance of General Obligation Bonds and Making An Appropriation for the Reimbursement of the Airport Revenue Fund) passed by this regular session of 1996, and designated to be financed from the general obligation bond fund and from the general obligation bond fund with debt service cost to be paid from special funds; provided that the sum total of the general obligation bonds so issued shall not exceed \$134,282,000.

Any law to the contrary notwithstanding, general obligation bonds may be issued from time to time in accordance with section 39-16, Hawaii Revised Statutes, in such principal amount as may be required to refund any general obligation bonds of the State of Hawaii heretofore or hereafter issued pursuant to law.

SECTION 4. The provisions of this Act are declared to be severable and if any portion thereof is held to be invalid for any reason, the validity of the remainder of this Act shall not be affected.

SECTION 5. In printing this Act, the revisor of statutes shall substitute in section 1 and section 3 the corresponding act numbers for bills identified therein.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

#### Notes

1. Act 244.
2. Act 287.
3. Act 232.
4. Act 77.
5. Act 118.

A Bill for an Act Relating to Administrative Revocation of Driver's License.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-254, Hawaii Revised Statutes, is amended by amending subsections (e) and (f) to read as follows:

“(e) The notice shall state that if the arrestee's license is administratively revoked after the review, a decision shall be mailed to the arrestee containing, at a minimum, the following information:

- (1) The reasons why the arrestee's license was administratively revoked;
- (2) That the arrestee may request the director, within [five] six days of the date the decision is mailed, to schedule an administrative hearing to review the administrative revocation;
- (3) That if the arrestee requests an administrative hearing within [five] six days, the hearing shall be scheduled to commence no later than twenty-five days after the date of arrest;
- (4) The procedure to request an administrative hearing;
- (5) That failure to request an administrative hearing within the time provided shall cause the administrative revocation to take effect for the period and under the conditions established by the director in the decision;
- (6) That the arrestee may regain the right to a hearing by requesting the director, within sixty days after the arrest, to schedule a hearing;
- (7) That the director shall schedule the hearing to commence no later than thirty days after the request is made but that the temporary permit shall not, in any event, be extended if the arrestee fails to request an administrative hearing within the initial [five-day] six-day period provided for that purpose;
- (8) That failure to attend the hearing shall cause the administrative revocation to take effect for the period and under the conditions indicated; and
- (9) The duration of the administrative revocation and other conditions which may be imposed, including alcohol counseling, alcohol treatment, and installation of an ignition interlock system.

(f) The notice shall provide, at a minimum, the following information relating to administrative hearings:

- (1) That the arrestee shall have [five] six days from the date the review decision was mailed to request that an administrative hearing be scheduled;
- (2) That a request for an administrative hearing shall entitle the arrestee to review and copy all documents considered at the review, including the arrest report and the sworn statements, prior to the hearing;
- (3) That the arrestee may be represented by an attorney, submit evidence, give testimony, and present and cross-examine witnesses; and
- (4) That a written decision shall be mailed no later than five days after completion of the hearing.”

SECTION 2. Section 286-258, Hawaii Revised Statutes, is amended by amending subsections (f) and (g) to read as follows:

“(f) If the director administratively revokes the arrestee's driver's license, the director shall mail to the arrestee a written decision stating the reasons for the



administrative revocation. The decision shall also indicate that the arrestee has [five] six days from the date the decision is mailed to request an administrative hearing to review the director's decision. The decision shall also explain the procedure by which to request an administrative hearing, and shall be accompanied by a form, postage prepaid, which the arrestee may fill out and mail in order to request an administrative hearing. The decision shall also inform the arrestee of the right to review and copy all documents considered at the review, including the arrest report and the sworn statements of the law enforcement officials, prior to the hearing. Further, the decision shall state that the arrestee may be represented by counsel at the hearing, submit evidence, give testimony, and present and cross-examine witnesses, including the arresting officer.

(g) Failure of the arrestee to request a hearing within the time provided in section 286-259(a) shall cause the administrative revocation to take effect for the period and under the conditions provided in the administrative review decision issued by the director under this section. The arrestee may regain the right to a hearing by requesting the director, within sixty days of the arrest, to schedule a hearing. The hearing shall be scheduled to commence no later than thirty days after the request is made. [In no event shall the temporary permit be extended if the arrestee fails to request a hearing within the initial five-day period provided for that purpose.] The administrative review decision issued by the director under this section shall clearly explain the consequences of failure to request an administrative hearing and the procedure by which the arrestee may regain the right to a hearing."

SECTION 3. Section 286-259, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) If the director administratively revokes the arrestee's license after administrative review, the arrestee may request an administrative hearing to review the decision within [five] six days of the date the administrative review decision is mailed. The hearing shall be scheduled to commence no later than twenty-five days from the date the notice of administrative revocation was issued. The director may continue the hearing only as provided in subsection (j)."

SECTION 4. Section 286-260, Hawaii Revised Statutes, is amended to read as follows:

**"§286-260 Judicial review; procedure.** (a) If the director sustains the administrative revocation after administrative hearing, the arrestee may file a petition for judicial review within thirty days after the administrative hearing decision is mailed. The petition shall be filed with the clerk of the district court in the district in which the offense occurred and shall be accompanied by the required filing fee for civil actions. The filing of the petition shall not operate as a stay of the administrative revocation nor shall the court stay the administrative revocation pending the outcome of the judicial review. The petition shall be appropriately captioned. The petition shall state with specificity the grounds upon which the petitioner seeks reversal of the administrative revocation.

(b) The court shall schedule the judicial review as quickly as practicable, and the review shall be on the record of the administrative hearing without taking of additional testimony or evidence. If the petitioner fails to appear without just cause, the court shall affirm the administrative revocation.

(c) The sole issues before the court shall be whether the director exceeded constitutional or statutory authority, erroneously interpreted the law, acted in an arbitrary or capricious manner, committed an abuse of discretion, or made a determination that was unsupported by the evidence in the record.

(d) The court shall not remand the matter back to the director for further proceedings consistent with its order."

SECTION 5. Section 286-264, Hawaii Revised Statutes is amended by amending subsection (a) to read as follows:

“(a) If an arrestee subject to administrative revocation under this part submitted to a breath or blood test and has had no prior alcohol enforcement contacts[,] during the five years preceding the date of arrest, the director [may], at the request of the arrestee at the administrative hearing, may issue a conditional permit allowing the arrestee to drive after a minimum period of absolute license revocation of thirty days if one or more of the following conditions are met:

- (1) The arrestee is gainfully employed in a position that requires driving and will be discharged if the arrestee’s driving privileges are administratively revoked; or
- (2) The arrestee has no access to alternative transportation and therefore must drive to work or to a substance abuse treatment facility or counselor for treatment ordered by the director under section 286-261.”

SECTION 6. Section 286-266, Hawaii Revised Statutes, is amended to read as follows:

“**[[]§286-266[]] Computation of time.** The time in which any act provided in this part is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or holiday, and then it is also excluded.”

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 1996.

(Approved June 18, 1996.)

## ACT 231

H.B. NO. 3340

A Bill for an Act Relating to the Powers and Duties of the Comptroller.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 40-1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) With respect to the executive branch, except the University of Hawaii and the department of education, the comptroller shall have complete supervision of all accounts. The comptroller shall preaudit all proposed payments of \$10,000 or more to determine the propriety of expenditures and compliance with executive orders and rules that may be in effect. When necessary, the comptroller shall withhold approval of any payment. Whenever approval is withheld, the department

or agency concerned shall be promptly notified. With respect to the University of Hawaii and the department of education, the comptroller shall issue warrants for the release of funds for the operating costs of the university or the department of education, as applicable, in amounts and at times mutually agreed upon by the governor or director of finance and the university or department of education, as applicable; provided [that the]:

- (1) The amounts released shall not exceed the allotment ceilings for the respective funding sources of the university's or the department of education's appropriations established by the governor for an allotment period pursuant to section 37-34[; provided further that the]; and
- (2) The comptroller may issue warrants as an advance from the state treasury to the University of Hawaii and the department of education to establish a checking account and provide working capital in amounts and at times mutually agreed upon by the governor or director of finance and the University of Hawaii and the department of education.

The University of Hawaii and the department of education shall preaudit all proposed payments to determine the propriety of expenditures and compliance with applicable laws, executive orders, and rules as may be in effect. The University of Hawaii and the department of education shall make disbursements for operating expenses from the amounts released by the comptroller and maintain records and documents necessary to support those disbursements at times mutually agreed upon by the university president or the superintendent of education, as applicable, and the comptroller; provided that when requested by the university or department of education, the comptroller shall make all disbursements for the university or department of education, as applicable, subject to available allotment. Funds released pursuant to this section shall be deposited by the university or department of education, as applicable, in accordance with the provisions applicable to the director of finance by chapter 38. Any interest earned on the deposit of funds released pursuant to this section shall be deposited in the state treasury at the end of each fiscal year."

SECTION 2. Section 40-4, Hawaii Revised Statutes, is amended to read as follows:

**"§40-4 Publication of statements.** The comptroller shall prepare and submit to the governor, [and publish in a newspaper of general circulation in the State,] immediately following the close of each fiscal year, a statement of income and expenditure by funds, showing the principal sources of revenue, the function or purpose for which expenditures were made, together with a consolidated statement showing similar information for all funds; also a statement showing the balance in each fund at the beginning of the fiscal year, plus the receipts, minus the disbursements, and the balance on hand at the close of the fiscal year after deducting outstanding warrants and vouchers. The comptroller may request all agencies, the judiciary, the University of Hawaii, the department of education, and the legislature to provide such information as may be required for the preparation of statements."

SECTION 3. Section 40-51, Hawaii Revised Statutes, is amended to read as follows:

**"§40-51 Money drawn only on warrants.** Excepting moneys paid for the redemption of bonds of the state debt, and the interest coupons of the same, and for interest on overdue warrants, and drafts against special deposits and for the expenses of the legislature and the judiciary, and payment authorized by the comptroller by means of electronic funds transfers and through automated clearinghouses for the

purposes of implementing an electronic benefits transfer system for the department of human services, no money shall be drawn from or out of the treasury except upon warrants, substantially in the form of section 40-52, issued from the comptroller's office[.]; provided that upon request, the comptroller shall provide financial services involving the issuance of warrants on behalf of the legislature and the judiciary. Every [such] warrant shall be signed by the comptroller or the comptroller's deputy or by means of any mechanical check signer that may be adopted by the comptroller, and shall be made payable upon such date as may be approved by the director of finance to the order of the person to whom the State is directly indebted."

SECTION 4. Section 78-12, Hawaii Revised Statutes, is amended to read as follows:

**"§78-12 Salary withheld for indebtedness to the government. (a)** In case any officer, agent, employee or other person in the service of the State, any county, or any independent board or commission, is indebted to the State, any county, or to any independent board or commission, and [such] the indebtedness has been determined by a hearing pursuant to chapter 91, upon demand of the officer charged with the duty of collecting the indebtedness, the comptroller or other officer charged with the duty of paying the indebted officer, agent, employee, or other person, after notice to [him] the indebted person, shall withhold one-quarter of the salary, wages, or compensation due [him] the indebted person and pay the same, from time to time as the same shall become due, to the officer charged with the duty of collecting the indebtedness, until the full amount of the indebtedness, together with penalties and interest thereon, is paid.

(b) If the indebtedness has arisen or been incurred by reason of the indebted officer, agent, employee, or other person having embezzled, stolen, or otherwise unlawfully acquired any moneys or other property of the State, any county, or any independent board or commission, the whole amount of the salary, wages, or compensation, or so much thereof as may be required to pay the indebtedness in full, shall be withheld and paid over to the officer charged with the duty of collecting the indebtedness.

(c) The officer, agent, employee or other person in the service of the State, any county, or any independent board or commission alleged to be indebted to the State, any county, or to any independent board or commission may waive [his] the right to a hearing to determine the indebtedness and instead assign by contract to the officer charged with the duty of collecting debts:

- (1) [the] The priority right to payment of the total amount of the alleged indebtedness[.]; and
- (2) [the] The right of [such] the officer to deduct from each and every periodic payment normally due the assignor an amount equal to the maximum legally permissible amount deductible under garnishment law until [such time that] the total amount owing is paid in full.

For purposes of this section, a person shall be deemed to waive the hearing if the person fails to request a hearing within fifteen days from the date the person was notified of the indebtedness and the opportunity to request a hearing.

(d) The operation of all garnishment process served upon the comptroller or other paying officer shall be stayed until the indebtedness has been fully paid.

(e) If the indebtedness has occurred as a result of salary or wage overpayment, the comptroller or other officer shall determine the amount of indebtedness and notify the employee in writing of the indebtedness. If the employee contests the comptroller or other officer's determination of indebtedness, the employee may request a hearing pursuant to chapter 91, and upon conclusion of the hearing or if the employee waives the hearing, if the indebtedness is equal to or less than \$1,000, the

comptroller or other officer shall immediately deduct from any subsequent periodic payment normally due the employee any amount up to the total amount of indebtedness. For indebtedness greater than \$1,000, the comptroller or other officer shall deduct:

- (1) An amount agreed to by the employee and employer, but not less than \$100 per pay period; or
- (2) One-quarter of the salary, wages, or compensation due the employee until the indebtedness is repaid in full."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 232

H.B. NO. 3453

A Bill for an Act Relating to the Hawaiian Homes Commission Act, 1920, as Amended.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 214, Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (b) to read as follows:

“(b) In addition the department may:

- (1) Use moneys in the Hawaiian home operating fund, with the prior approval of the governor, to match federal, state, or county funds available for the same purposes and to that end, enter into such undertaking, agree to such conditions, transfer funds therein available for such expenditure, and do and perform such other acts and things, as may be necessary or required, as a condition to securing matching funds for such projects or works;
- (2) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof to lessees in accordance with section 215;
- (3) Loan or guarantee the repayment of or otherwise underwrite any authorized loan or portion thereof to a cooperative association in accordance with section 215;
- (4) Permit and approve loans made to lessees by government agencies or private lending institutions, where the department assures the payment of such loans; provided that upon receipt of notice of default in the payment of such assured loans, the department may, upon failure of the lessee to cure the default within sixty days, cancel the lease and pay the outstanding balance in full or may permit the new lessee to assume the outstanding debt; and provided further that the department shall reserve the following rights: the right of succession to the lessee's interest and assumption of the contract of loan; the right to require that written notice be given to the department immediately upon default or delinquency of the lessee; and any other rights enumerated at the time of assurance necessary to protect the monetary and other interests of the department;

- (5) Secure, pledge, or otherwise guarantee the repayment of moneys borrowed by the department from government agencies or private lending institutions and pay the interim interest or advances required for loans; provided that the State's liability, contingent or otherwise, either on moneys borrowed by the department or on departmental guarantees of loans made to lessees under this paragraph and paragraphs (2), (3), and (4) of this subsection, shall at no time exceed [\$21,000,000] \$50,000,000; the department's guarantee of repayment shall be adequate security for a loan under any state law prescribing the nature, amount, or form of security or requiring security upon which loans may be made;
- (6) Use available loan fund moneys or other funds specifically available for such purposes as cash guarantees when required by lending agencies;
- (7) Exercise the functions and reserved rights of a lender of money or mortgagee of residential property in all direct loans made by government agencies or by private lending institutions to lessees the repayment of which is assured by the department. The functions and reserved rights shall include but not be limited to, the purchasing, repurchasing, servicing, selling, foreclosing, buying upon foreclosure, guaranteeing the repayment, or otherwise underwriting, of any loan, the protecting of security interest, and after foreclosures, the repairing, renovating, or modernization and sale of property covered by the loan and mortgage;
- (8) Pledge receivables of loan accounts outstanding as collateral to secure loans made by government agencies or private lending institutions to the department, the proceeds of which shall be used by the department to make new loans to lessees or to finance the development of available lands for purposes permitted by this Act; provided that any loan agreement entered into under this paragraph by the department shall include a provision that the money borrowed by the department is not secured directly or indirectly by the full faith and credit or the general credit of the State or by any revenues or taxes of the State other than the receivables specifically pledged to repay the loan; provided further that in making loans or developing available lands out of money borrowed under this paragraph, the department may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient, to assure repayment of the funds borrowed, and the fees, premiums, and charges shall be deposited into the Hawaiian home trust fund; and provided further that no moneys of the Hawaiian home loan fund may be pledged as security under this paragraph; and
- (9) Notwithstanding any other provisions of this Act to the contrary, transfer into the Hawaiian home trust fund any available and unpledged moneys from any loan funds, the Hawaiian loan guarantee fund, or any fund or account succeeding thereto, except the Hawaiian home loan fund, for use as cash guarantees or reserves when required by a federal agency authorized to insure or guarantee loans to lessees."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 233

H.B. NO. 3522

A Bill for an Act Relating to Public Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 171-17, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The sale price or lease rental of lands to be disposed of by drawing or by negotiation shall be no less than the value determined by [a]:

- (1) An employee of the board qualified to appraise lands; or
- (2) A disinterested appraiser or appraisers whose services shall be contracted for by the board, and such appraisal, and any further appraisal [made at the request of the purchaser and] with the approval of the board, shall be at the cost of the purchaser[.];

provided that the sale price or lease rental shall be determined by disinterested appraisal whenever prudent management so dictates; provided further that should the purchaser fail to agree upon the sale price or lease rental, the purchaser may appoint an appraiser who together with the board's appraiser shall appoint a third appraiser, and the sale price or lease rental shall be determined by arbitration as provided for in chapter 658 which shall be final and binding. The purchaser shall pay for all appraisal costs, except that the cost of the third appraiser shall be borne equally by the purchaser and the board.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 234

H.B. NO. 3523

A Bill for an Act Relating to Public Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 171-17, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) In the event of reopening of the rental to be paid on a lease, the rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental shall be determined by [an]:

- (1) An employee of the department qualified to appraise lands; or
- (2) A disinterested appraiser whose services shall be contracted for by the board;

and the lessee shall be promptly notified of the determination; provided that should the lessee fail to agree upon the fair market rental, the lessee may appoint the lessee's own appraiser who together with the board's appraiser shall appoint a third appraiser and the fair market rental shall be determined by arbitration as provided in chapter 658. The lessee shall pay for the lessee's own appraiser, the board shall pay

for its appraiser, and the cost of the third appraiser shall be borne equally by the lessee and the board. Any language in present leases to the contrary notwithstanding, the provisions of this subsection, when possible and notwithstanding the six-month notice required, shall apply to leases with original lease rental reopening dates effective before and after [May 28, 1985.] July 1, 1996.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 235

H.B. NO. 3538

A Bill for an Act Relating to Criminal Injuries Compensation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 351-13, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) If the applicant is dissatisfied with the determination by the administrator, the applicant may appeal to the commission for a hearing[.]; provided that to be considered, the written appeal shall be received by the commission within sixty days of the mailing of a certified copy of the decision and order, and the commission shall review the case as if it was not heard before and as if no decision had been previously rendered. In such an event, the commission’s decision shall be final.”

SECTION 2. Section 351-16, Hawaii Revised Statutes, is amended to read as follows:

“**\$351-16 Attorneys’ fees.** The criminal injuries compensation commission [may], as<sup>1</sup> part of any order entered under this chapter, may determine and allow reasonable attorneys’ fees, which if the award of compensation is more than \$1,000 shall not exceed [fifteen per cent of the award,] \$150, to be paid out of but not in addition to the award, to the attorneys representing the applicant[.]; provided that the amount of the attorneys’ fees shall not, in any event, exceed the award of compensation remaining after deducting that portion thereof for expenses actually incurred by the claimant.

Any attorney who charges, demands, receives, or collects for services rendered in connection with any proceedings under this chapter any amount in excess of that allowed under this section, if any compensation is paid, shall be fined not more than \$2,000.”

SECTION 3. Section 351-17, Hawaii Revised Statutes, is amended to read as follows:

“**\$351-17 Reconsideration by commission; judicial review.** (a) [The] In the absence of an appeal to the commission, the commission, at any time, on its own motion, may reconsider the order or decision and revoke, confirm, or vary the order or decision, based upon the findings of the commission. Any applicant aggrieved by an order or decision may request reconsideration; provided that, to be considered,



the request shall be received by the commission within thirty days after [service] mailing of a certified copy of the order or decision[.] to the applicant's last known address.

(b) Any person aggrieved by an order or decision of the criminal injuries compensation commission on the sole ground that the order or decision was in excess of the commission's authority or jurisdiction, shall have a right of appeal to the circuit court of the circuit in which the person resides; provided the appeal is filed within thirty days after [service] mailing of an original or a certified copy of the order or decision[.] to the applicant's last known address. Except as otherwise provided in this section, orders and decisions of the commission shall be conclusive and not subject to judicial review."

SECTION 4. Section 351-31, Hawaii Revised Statutes, is amended to read as follows:

**"§351-31 Eligibility for compensation.** (a) In the event any private citizen is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State after June 6, 1967, or any state resident is injured or killed by any act or omission of any other person after July 1, 1989, in another state not having a compensation program eligible for federal funding under 42 United States Code §10601, et seq., under which the state resident may receive compensation, which act or omission is within the description of the crimes enumerated in section 351-32, the criminal injuries compensation commission in its discretion, upon an application, may order the payment of compensation in accordance with this chapter:

- (1) To or for the benefit of the victim;
- (2) To any person responsible for the maintenance of the victim, where that person has suffered pecuniary loss or incurred expenses as a result of the victim's injury or death;
- (3) In the case of the death of the victim, to or for the benefit of any one or more of the dependents of the deceased victim; or
- (4) To [a relative of a deceased victim where the relative] any person who has incurred expenses on account of hospital, medical, funeral, and burial expenses as a result of the deceased victim's injury and death.

(b) For the purposes of this chapter, a person shall be deemed to have intentionally committed an act or omission notwithstanding that by reason of age, insanity, drunkenness, or otherwise the person was legally incapable of forming a criminal intent.

(c) In determining whether to make an order under this section, the commission may consider any circumstances it determines to be relevant, and the commission shall consider the behavior of the victim, and whether, because of provocation or otherwise, the victim bears any share of responsibility for the crime that caused the victim's injury or death and the commission shall reduce the amount of compensation in proportion to the amount of responsibility for the crime which caused the victim's injury or death; provided that if such proportion is greater than the responsibility of the person who committed the act or omission or in the case of more than one person, the aggregate responsibility of such persons because of whom compensation is sought, the commission shall not award any compensation to such victim.

(d) An order may be made under this section whether or not any person is prosecuted for or convicted of a crime arising out of an act or omission described in subsection (a)[.]; provided an arrest has been made or such act or omission has been reported to the police without undue delay. No order may be made under this section unless the commission finds that:

(1) The act or omission did occur; and

(2) The injury or death of the victim resulted from the act or omission.

Upon application from either the prosecuting attorney or the chief of police of the appropriate county, the commission may suspend proceedings under this chapter for such period as it deems desirable on the ground that a prosecution for a crime arising out of the act or omission has been commenced or is imminent, or that release of the investigation report would be detrimental to the public interest.

(e) If the commission finds that an applicant has made a false statement or representation of a material fact knowing it to be false or has knowingly failed to disclose a material fact to obtain or increase any compensation under this chapter and if the false statement or representation was discovered prior to the payment of compensation, the claim may be denied in its entirety; provided that if the claim has already been paid, the applicant is responsible for reimbursement to the commission."

SECTION 5. This Act does not affect the rights and duties that were matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

**Note**

1. Prior to amendment "a" appeared here.

**ACT 236**

H.B. NO. 3539

A Bill for an Act Relating to Criminal Injuries Compensation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to provide for the mechanism to recover compensation that the applicant was not entitled to.

SECTION 2. Chapter 351, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§351- Recovery of compensation paid.** (a) Any person who has received under this chapter any amount as compensation to which the person was not entitled shall be liable for that amount unless the overpayment was received without fault on the part of the recipient and its recovery would be against equity and good conscience. The order or decision shall specify that the person is liable to repay to the fund the amount of overpaid compensation and the basis of the overpayment.

(b) The person liable shall, in the discretion of the commission, either repay any amount to the criminal injuries compensation fund or have such amount deducted from any future compensation payable to the person under this chapter.

(c) Failure to comply with the provisions of this section by the person liable to repay overpaid compensation may at the discretion of the commission, result in civil action in the name of the State by the attorney general."

SECTION 3.<sup>1</sup> This Act shall take effect July 1, 1996.

(Approved June 18, 1996.)

**Note**

1. No Ramseyer clause. Edited pursuant to HRS §23G-16.5.

**ACT 237**

H.B. NO. 3583

A Bill for an Act Relating to the University of Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 304-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board may charge a resident tuition fee for regular courses of instruction at any University of Hawaii campus, including any community college; provided that the tuition fee for nonresident students, both undergraduate and graduate, shall be not less than two times the tuition fee for resident students, but in no event less than two times the undergraduate tuition fee for resident students at the Manoa Campus.

The board may also charge other fees for special programs of instruction, as well as laboratory fees, course fees, fees for student activities, and an information technology user fee. The board may charge other fees for summer session or evening courses, including differential fees for nonresident students.

[The nonresident tuition and fee differential shall not be applicable to:

- (1) East-West Center student grantees pursuing baccalaureate or advanced degrees;
- (2) United States military personnel stationed in Hawaii on active duty, and their authorized dependents during the period that the personnel are stationed in the State;
- (3) Hawaiians, as defined in section 10-2, residing outside of Hawaii;
- (4) Students from any Pacific island or Asian district, commonwealth, territory, or insular jurisdiction, state, or nation that does not provide public institutions of higher learning; and
- (5) Employees of the university, their spouses, and dependents.]

The board may waive entirely or reduce the tuition fee or any of the other fees for graduate teaching and research assistants. The board may enter into agreements with government and university officials of any other state or foreign country to provide for reciprocal waiver of the nonresident tuition and fee differential. The board may waive the nonresident tuition and fee differential for selected students from Pacific and Asian jurisdictions when their presence would be beneficial to the university or the State. The board may waive entirely or reduce the tuition fee or any of the other fees for students, resident or nonresident. The board shall determine the percentage of allowable tuition and fee waivers for financial need and other university priorities. These tuition waivers and waivers of the nonresident tuition and fee differential shall be awarded in accordance with guidelines established by the board.”

SECTION 2. Section 304-8.1, Hawaii Revised Statutes, is amended to read as follows:

**“§304-8.1 Research and training revolving fund.** (a) There is established a University of Hawaii research and training revolving fund into which shall be deposited [fifty] one hundred per cent of the total amount of indirect overhead [funds] revenues generated by the university [for] from research and training [purposes in the prior fiscal year. Unless otherwise provided by law, all other receipts shall immediately be deposited to the credit of the general fund of the State.] programs. The board of regents of the University of Hawaii is authorized to expend [funds] eighty-four per cent of the revenues deposited in the [research and training revolving] fund for [research]:

- (1) Research and training purposes which may result in additional research and training grants and contracts[.]; and [for purposes of facilitating]
- (2) Facilitating research and training at the university.

(b) The University of Hawaii shall prepare and submit an annual report on the status of the research and training revolving fund to the legislature twenty days before the convening of each regular session. The annual report shall include but not be limited to a breakdown of travel expenses.

(c) [On July 1, 1984, in addition to the amount specified in subsection (a), and notwithstanding] Notwithstanding sections 304-10, 304-8.92, and 304-8.96 to the contrary, [the amount of \$2,500,000 derived from indirect overhead sources on account of all university held federal and other research and training contracts and grants shall be deposited into] the board of regents or its designee, may establish a separate account [of] within the research and training revolving fund[. The board of regents may expend these funds] for the purpose of providing advance funding to meet reimbursable costs incurred in connection with federally financed research and training projects. Any reimbursement received as a result of providing advance funding shall be deposited into the research and training revolving fund to be used for the purpose of meeting reimbursable costs incurred in connection with federally financed projects[; provided that the sum of the amounts held in the research and training revolving fund for the purpose of this subsection and the amounts advanced pursuant to this subsection shall not exceed in the aggregate \$2,500,000 at any time].

(d) Revenues deposited into the fund shall not be used as a basis for reducing any current or future budget request or allotment to the University of Hawaii unless the university requests such a reduction.”

SECTION 3. Section 304-16.5, Hawaii Revised Statutes, is amended to read as follows:

**“[[§304-16.5]] University of Hawaii tuition and fees special fund; tuition schedule and waivers.** (a) There is established the University of Hawaii tuition and fees special fund into which shall be deposited all revenue collected by the university for regular credit tuition and tuition related course and fee charges, except as provided by law. Moneys deposited into the fund shall be expended to maintain or improve the university’s programs and operations and shall not be:

- (1) Used as a justification for reducing any budget request or allotment to the University of Hawaii unless the university requests such a reduction;
- (2) Transferred unless otherwise authorized by the legislature; and
- (3) Restricted by the governor or the director of finance without the prior approval of the legislature.

Any rule, policy, or action of any agency or individual in contravention of this subsection shall be void as against public policy.

(b) Notwithstanding section 304-4, resident undergraduate tuition shall not exceed thirty per cent of the estimated average annual cost of education; provided

that the tuition for any apprenticeship training program at the community colleges shall be at least 30 cents per clock hour.

For the purposes of this subsection, the "estimated average annual cost of education", as formulated by the university, shall include, but not be limited to, all instructional costs, all student service costs, and a pro rata share of institutional support, academic support, and fringe benefits.

(c) The board of regents, or its designated representatives, is authorized to grant, modify, or suspend tuition waivers. The board of regents shall provide a report and make recommendations as appropriate to the legislature on all tuition waivers no later than twenty days prior to the convening of each regular session.

(d) Any law to the contrary notwithstanding, the board of regents may authorize expenditures from this fund for the purpose of generating private donations for deposit into the University of Hawaii foundation for the purposes of the university. Any expenditure authorized pursuant to this subsection shall be for a public purpose and shall not be subject to chapters 42D, 103, and 103D. The university shall submit a comprehensive report to the legislature every regular session detailing the use of any funds authorized by the board under this subsection."

SECTION 4. Section 304-17, Hawaii Revised Statutes, is repealed.

SECTION 5. Notwithstanding any law to the contrary, the board of regents may continue existing tuition waiver programs in the interim until appropriate action is taken to change or discontinue the programs.

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval; provided that section 1 shall take effect on January 1, 1997, and section 2 shall take effect on July 1, 1997.

(Approved June 18, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 238**

H.B. NO. 3584

A Bill for an Act Relating to the University of Hawaii Tuition and Fees Special Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 304-16.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established the University of Hawaii tuition and fees special fund into which shall be deposited all revenue collected by the university for regular

credit tuition [and], tuition related course and fee charges, and any other charges to students, except as provided by law. Moneys deposited into the fund shall be expended to maintain or improve the university's programs and operations and shall not be:

- (1) Used as a justification for reducing any budget request or allotment to the University of Hawaii unless the university requests such a reduction;
- (2) Transferred unless otherwise authorized by the legislature; and
- (3) Restricted by the governor or the director of finance without the prior approval of the legislature.

Any rule, policy, or action of any agency or individual in contravention of this subsection shall be void as against public policy."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 239

H.B. NO. 3596

A Bill for an Act Relating to the Disposition of an Election Tie.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 11-1, Hawaii Revised Statutes, is being amended to add a definition to be appropriately inserted and to read as follows:

"“Voter turnout,” means the total number of voters at an election as determined by the number of ballot cards tabulated by the computer or of paper ballots counted by the precinct officials. When there is more than one ballot card issued to each voter, “voter turnout” means the total count of the alpha ballot card with the highest number of cards tabulated by the computer. Ballots that are blank or ballots that are rejected for any reason shall be included in the count of the total number of voters.”

SECTION 2. Section 11-157, Hawaii Revised Statutes, is amended to read as follows:

**“§11-157 In case of tie.** In case of the failure of an election by reason of the equality of vote between two or more candidates, the tie shall be decided by the chief election officer or county clerk in the case of county elections in accordance with the following procedure:

- (1) In the case of an election involving a seat for the senate, house of representatives, board of education, or county council where only voters within a specified district are allowed to cast a vote, the winner shall be declared as follows:
  - (A) For each precinct in the affected district, an election rate point shall be calculated by dividing the total [number of registered voters] voter turnout in that precinct by the total [number of registered voters] voter turnout in the district. For the purpose of this subparagraph, the absentee votes cast for the affected district

shall be treated as a precinct. The election rate point shall be calculated by dividing the total absentee votes cast for the affected district by the total [number of registered voters] voter turnout in that district. All election rate points shall be expressed as decimal fractions rounded to the nearest hundred thousandth.

- (B) The candidate with the highest number of votes in a precinct shall be allocated the election rate point calculated under subparagraph (A) for that precinct. In the event that two or more persons are tied in receiving the highest number of votes for that precinct, the election rate point shall be equally apportioned among those candidates involved in that precinct tie.
  - (C) After the election rate points calculated under subparagraph (A) for all the precincts have been allocated as provided under subparagraph (B), the election rate points allocated to each candidate shall be tallied and the candidate with the highest election rate point total shall be declared the winner.
  - (D) If there is a tie between two or more candidates in the election rate point total, the candidate who is allocated the highest election rate points from [the greatest number of precincts] the precinct with the largest voter turnout shall be declared the winner.
- (2) In the case of an election involving a federal office or an elective office where the voters in the entire State or in an entire county are allowed to cast a vote, the winner shall be declared as follows:
- (A) For each representative district in the State or county, as the case may be, an election rate point shall be calculated by dividing the total [number of registered voters] voter turnout in that representative district by the total [number of registered voters] voter turnout in the state, county, or federal office district, as the case may be; provided that for purposes of this subparagraph:
    - (i) The absentee votes cast for a statewide, countywide, or federal office shall be treated as a separate representative district and the election rate point shall be calculated by dividing the total absentee votes cast for the statewide, countywide, or federal office by the total [number of registered voters] voter turnout in the state, county, or federal office district, as the case may be.
    - (ii) The overseas votes cast for any election in the State for a federal office shall be treated as a separate representative district and the election rate point shall be calculated by dividing the total number of overseas votes cast for the affected federal office by the total [number of registered voters] voter turnout in the affected federal office district. The term "overseas votes" means those votes cast by absentee ballots for a presidential election as provided in section 15-3.

All election rate points shall be expressed as decimal fractions rounded to the nearest hundred thousandth.

- (B) The candidate with the highest number of votes in a representative district shall be allocated the election rate point calculated under subparagraph (A) for that district. In the event that two or more persons are tied in receiving the highest number of votes for that district, the election rate point shall be equally apportioned among those candidates involved in that district tie.

- (C) After the election rate points calculated under subparagraph (A) for all the precincts have been allocated as prescribed under subparagraph (B), the election rate points allocated to each candidate shall be tallied and the candidate with the election rate point total shall be declared the winner.
- (D) If there is a tie between two or more candidates in the election rate point total, the candidate who is allocated the highest election rate points from the [greatest number of representative districts] representative district with the largest voter turnout shall be declared the winner."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 240

H.B. NO. 3603

A Bill for an Act Relating to the Office of Hawaiian Affairs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 10-5, Hawaii Revised Statutes, is amended to read as follows:

**"§10-5 Board of trustees; powers and duties.** The board shall have the power in accordance with law to:

- (1) Manage, invest, and administer the proceeds from the sale or other disposition of lands, natural resources, minerals, and income derived from whatever sources for native Hawaiians and Hawaiians, including all moneys received by the office equivalent to that pro rata portion of the revenue derived from the public land trust referred to in section 10-2;
- (2) Exercise control over real and personal property set aside to the office by the State of Hawaii, the United States of America, or any private sources, and transferred to the office for native Hawaiians and Hawaiians; provided that all of the properties acquired by the office shall be controlled and managed for the purposes of this chapter, subject to any limitations of the trust provisions established by article XII, sections 5 and 6, of the state Constitution;
- (3) Collect, receive, deposit, withdraw, and invest money and property on behalf of the office;
- (4) Formulate policy relating to the affairs of native Hawaiians and Hawaiians, provided that such policy shall not diminish or limit the benefits of native Hawaiians under [Article] article XII, section 4, of the state Constitution;
- (5) Otherwise act as a trustee as provided by law;
- (6) Delegate to the administrator, its officers and employees such powers and duties as may be proper for the performance of the powers and duties vested in the board;



- (7) Provide grants to public or private agencies for pilot projects, demonstrations, or both, where those projects or demonstrations fulfill criteria established by the board;
- (8) Make available technical and financial assistance and advisory services to any agency or private organization for native Hawaiian and Hawaiian programs, and for other functions pertinent to the purposes of the office of Hawaiian affairs. Financial assistance may be rendered through contractual arrangements as may be agreed upon by the board and any such agency or organization; and
- (9) Adopt and use a common seal by which all official acts shall be authenticated."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 241

H.B. NO. 3611

A Bill for an Act Relating to the Employees' Retirement System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 88-132.5, Hawaii Revised Statutes, is amended to read as follows:

**"§88-132.5 Credit for military service.** (a) Any member of the system who rendered honorable active military service in the armed forces of the United States and who has [eight] ten years of credited service in the system, may be credited with membership service credit for active military service of up to four years or the actual number of years of active military service, whichever is less, as follows:

- (1) Any member with [eight] ten years of credited service in the system may be credited with up to two years of membership service credit;
- (2) Any member with twenty years of credited service in the system may be credited with up to three years of membership service credit; and
- (3) Any member with twenty-five years of credited service in the system may be credited with up to four years of membership service credit.

(b) Any retirant who returns to employment, is reenrolled as a member of the system, and has at least three years of credited service in the system during the period of reemployment may be credited with membership service credit for active military service as provided in subsection (a); provided that membership service credit shall be based upon the member's total service.

(c) Active military service in the military reserve or national guard is not considered active military service unless in time of war or declared national or state emergency. Membership service creditable under this section shall be credited in accordance with sections 88-59 and 88-272.

(d) A contributory member's active military service shall be considered service in the member's occupation at the time that service is credited and shall be purchased at the rate specified in section 88-45, and the retirement allowance provided by that service shall be calculated as provided in section 88-74.

## ACT 242

(e) Any violation of this section shall result in the forfeiture of the amount of the purchase of membership service and loss of benefits and membership service credit for military service.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 242

H.B. NO. 3616

A Bill for an Act Relating to Leave Sharing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 157, Session Laws of Hawaii 1993, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect upon its approval [and be repealed on June 30, 1996].”

SECTION 2. Statutory material to be repealed is bracketed.

SECTION 3. This Act shall take effect on June 29, 1996.

(Approved June 18, 1996.)

## ACT 243

H.B. NO. 3648

A Bill for an Act Relating to Driver Education and Training Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:10C-115, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner shall assess and levy upon each insurer, and self-insurer, a drivers education fund underwriters fee of [\$1.50] \$2 a year on each motor vehicle insured by each insurer or self-insurer. This fee is due and payable [in full] on [an annual] a quarterly basis by means and at a time to be determined by the commissioner.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 1996.

(Approved June 18, 1996.)

ACT 244

H.B. NO. 3650

A Bill for an Act Relating to the Judiciary.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act shall be known and may be cited as the Judiciary Supplemental Appropriations Act of 1996.

SECTION 2. This Act amends Act 18, Special Session Laws of Hawaii 1995.

SECTION 3. Act 18, Special Session Laws of Hawaii 1995, is amended by amending section 3 to read as follows:

“SECTION 3. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are appropriated or authorized from the sources of funding specified to the judiciary for the fiscal biennium beginning July 1, 1995, and ending June 30, 1997. The total expenditures and the number of permanent positions established in each fiscal year of the fiscal biennium shall not exceed the sums and the position ceilings indicated for each year, except as provided in this Act.

PROGRAM APPROPRIATIONS

				APPROPRIATIONS			
ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
The Judicial System							
1.	JUD101	COURTS OF APPEAL					
				[ 78.00* ]		[ 78.00* ]	
	OPERATING		[JUD]	76.00*		75.00*	
			JUD	[ 4,552,255A ]		[ 4,552,255A ]	
			JUD	4,523,137A		4,505,584A	
						75,000W	
2.	JUD111	CIRCUIT COURTS					
				[ 504.50* ]		[ 504.50* ]	
	OPERATING		[JUD]	492.50*		481.50*	
			JUD	[25,016,905A]		[25,016,905A]	
				24,589,484A		25,078,772A	
3.	JUD112	FAMILY COURTS					
				[ 426.00* ]		[ 426.00* ]	
	OPERATING		[JUD]	416.00*		409.00*	
			JUD	[26,292,426A]		[26,242,426A]	
			JUD	24,128,269A		24,063,210A	
				100,000B		100,000B	
4.	JUD121	DISTRICT COURTS					
				[ 514.50* ]		[ 514.50* ]	
	OPERATING		[JUD]	505.50*		487.50*	
			JUD	[17,482,409A]		[17,397,668A]	
				16,369,157A		16,999,687A	
				[ 53.00* ]		[ 53.00* ]	
				44.00*		35.00*	
			[JUD]	[ 1,919,649B ]		[ 1,919,649B ]	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
			<u>JUD</u>	<u>1,341,240B</u>		<u>1,476,259B</u>	
5.	JUD201	ADMIN. DIRECTOR SERVICES					
				[ 249.00* ]		[ 249.00* ]	
				239.00*		221.00*	
	OPERATING		[JUD]	[14,878,060A]		[14,705,460A]	
			<u>JUD</u>	<u>14,195,481A</u>		<u>14,030,761A</u>	
	INVESTMENT CAPITAL		<u>JUD</u>	<u>2,359,000C</u>		[ <sup>1</sup>	
			<u>JUD</u>			<u>1,336,000C</u> "]	

SECTION 4. Act 18, Special Session Laws of Hawaii 1995, is amended by amending section 5 to read as follows:

“SECTION 5. Provided that of the general fund appropriation for family court (JUD 112), a minimum sum of [\$369,300] \$347,142 designated for purchase of service for each fiscal year of the fiscal biennium, shall be expended for domestic violence legal hotline and the domestic violence clearinghouse services; and provided further that a status report stating the date and the amount that was provided to the domestic violence legal hotline and the domestic violence clearinghouse shall be submitted to the legislature no later [that] than twenty days prior to the convening of the 1996 and 1997 regular sessions.”

SECTION 5. Act 18, Special Session Laws of Hawaii 1995, is amended by adding a new section to read as follows:

“SECTION 10A. Provided that the judiciary shall make a study and report on all ADA requirements for each of the courts by circuit; provided further that the study shall include funding estimates for the services to be provided and the basis of these estimates; and provided further that the judiciary shall submit the report of its findings and recommendations to the legislature no later than twenty days prior to the convening of the 1997 regular session.”<sup>2</sup>

SECTION 6. Act 18, Special Session Laws of Hawaii 1995, is amended by amending section 11 to read as follows:

“SECTION 11. The sum of [\$2,359,000] \$3,695,000 appropriated or authorized in part II of this Act for capital improvements program projects shall be expended by the judiciary for the projects listed below; provided that several related or similar projects may be combined into a single project, if a combination is advantageous or convenient for implementation; and provided further that the total cost of the projects thus combined shall not exceed the total of the sums specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this part are in thousands of dollars.)

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
The Judicial System							
JUD201 -ADMIN. DIRECTOR SERVICES							
1. FAMILY COURT CENTER, KAPOLEI, OAHU							
PLANS, LAND ACQUISITION, AND DESIGN FOR THE FAMILY COURT CENTER AT KAPOLEI, OAHU.							
		PLANS		135			
		LAND		9			
		DESIGN		1,700			
		TOTAL FUNDING	JUD	1,844C			C
2. JUVENILE DETENTION CENTER, KAPOLEI, OAHU							
PLANS, LAND ACQUISITION, AND DESIGN FOR THE JUVENILE DETENTION CENTER AT KAPOLEI, OAHU.							
		PLANS		14			
		LAND		4			
		DESIGN		397			
		TOTAL FUNDING	JUD	415C			C
3. ARCHITECTURAL BARRIER REMOVAL FOR JUDICIARY BUILDINGS, STATEWIDE							
PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REMOVAL OF ARCHITECTURAL BARRIERS IN JUDICIARY BUILDINGS, STATEWIDE.							
		PLANS		5			
		DESIGN		25			
		CONSTRUCTION		60			
		EQUIPMENT		10			
		TOTAL FUNDING	JUD	100C			C
3A. <u>KOOLAUPOKO DISTRICT COURT, OAHU</u>							
<u>PLANS, LAND ACQUISITION, AND DESIGN FOR THE KOOLAUPOKO DISTRICT COURT.</u>							
		PLANS					1
		LAND					1
		DESIGN					588
		TOTAL FUNDING	JUD		C		590C
3B. <u>REMODELING AND UPGRADING JUDICIARY BUILDINGS, STATEWIDE</u>							
<u>PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REMODELING AND UPGRADING JUDICIARY BUILDINGS.</u>							
		PLANS					5
		DESIGN					18
		CONSTRUCTION					13
		EQUIPMENT					8
		TOTAL FUNDING	JUD		C		44C
3C. KAPUAIWA BUILDING RENOVATION, OAHU							

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
<u>DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF THE KAPUAIWA BUILDING.</u>							
		<u>DESIGN</u>					1
		<u>CONSTRUCTION</u>				700	
		<u>EQUIPMENT</u>				1	
		TOTAL FUNDING	JUD		C	702C	

SECTION 7. Act 18, Special Session Laws of Hawaii 1995, is amended:

(1) By adding a new section to read as follows:

“SECTION 14A. Any law to the contrary notwithstanding, the appropriation under Act 277, Session Laws of Hawaii 1993, section 16, as amended and re-numbered by Act 254, Session Laws of Hawaii 1994, section 5, in the amount indicated or balance thereof, unallotted, allotted, encumbered and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
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JUD 201-2	\$222,650 C <sup>2</sup>
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(2) By adding a new section to read as follows:

“SECTION 14B. Any law to the contrary notwithstanding, the appropriation under Act 277, Session Laws of Hawaii 1993, section 16, as amended and re-numbered by Act 254, Session Laws of Hawaii 1994, section 5, as amended by Act 18, Special Session Laws of Hawaii 1995, section 14, in the amount indicated or balance thereof, unallotted, allotted, encumbered and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
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JUD 201-1	\$590,000 C <sup>2</sup>
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SECTION 8. Act 18, Special Session Laws of Hawaii 1995, is amended by amending section 15 to read as follows:

“SECTION 15. General obligation bonds may be issued, as provided by law, to yield the amount that may be necessary to finance projects authorized in part II and listed in part IV of this Act; provided that the sum total of the general obligation bonds so issued shall not exceed [\$2,359,000] \$3,695,000 .”

SECTION 9. Act 18, Special Session Laws of Hawaii 1995, is amended:

(1) By adding a new section to read as follows:

“SECTION 20A. All unrequired balances in the general obligation bond fund, after the objectives of part II appropriations for capital improvements program purposes listed as projects in part IV have been met, shall be transferred to the judiciary project adjustment fund.”<sup>2</sup>

(2) By adding a new section to read as follows:

“SECTION 20B. If the amount allocated from the general obligation bond fund for a capital improvements program project listed in part IV of this Act is insufficient, the chief justice may make supplemental allotments from the project

adjustment fund; provided that supplemental allotments shall not be used to increase the scope of the project; and provided further that a report of all transfers into and out of the project adjustment fund shall be submitted to the legislature no later than twenty days prior to the convening of the regular session of 1997.’’<sup>2</sup>

SECTION 10. If any portion of this Act or its application to any person or circumstances is held to be invalid for any reason, the remainder of the Act and any provision thereof shall not be affected thereby. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be independent of the invalid portion and shall be expended to fulfill the objective and intent of the appropriation to the extent possible.

SECTION 11. If any manifest clerical, typographical, or other mechanical error is found in this Act, the chief justice is authorized to correct the error. All changes made pursuant to this section shall be reported to the legislature at its next session.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

#### Notes

1. Prior to amendment “C” appeared here.
2. Should be underscored.

## ACT 245

H.B. NO. 3653

A Bill for an Act Relating to Harassment.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 604-10.5, Hawai‘i Revised Statutes, is amended to read as follows:

**“§604-10.5 Power to enjoin and temporarily restrain harassment. (a)**

For the purposes of this section:

“Course of conduct” means a pattern of conduct composed of a series of acts over any period of time evidencing a continuity of purpose.

“Harassment” means [an]:

- (1) Physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault; or
- (2) An intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual, and that serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer emotional distress.

(b) The district courts shall have power to enjoin or prohibit[,] or temporarily restrain harassment.

(c) Any person who has been subjected to harassment may petition the district court of the district in which the petitioner resides for a temporary restraining order and an injunction from further harassment.

(d) A petition for relief from harassment shall be in writing and shall allege that a recent past act or acts of harassment may have occurred, or that threats of harassment make it probable that acts of harassment may be imminent; and shall be accompanied by an affidavit made under oath or statement made under penalty of perjury stating the specific facts and circumstances from which relief is sought.

(e) Upon petition to a district court under this section, the court may temporarily restrain for a period of fifteen days, persons named in the petition from harassing the petitioner if the alleged harassment has caused the petitioner substantial emotional distress. The court may issue an ex parte temporary restraining order either in writing or orally, provided that oral orders shall be reduced to writing by the close of the next court day following oral issuance.

(f) A hearing on the petition to enjoin harassment shall be held within fifteen days after it is filed. The parties named in the petition may file responses explaining, excusing, justifying, or denying the alleged act or acts of harassment. The court shall receive such evidence as is relevant at the hearing, and may make independent inquiry.

If the court finds by clear and convincing evidence that harassment as defined in paragraph (1) of that definition exists, it [shall] may enjoin for no more than three years further harassment of the petitioner[;], or that harassment as defined in paragraph (2) of that definition exists, it shall enjoin for no more than three years further harassment of the petitioner; provided that this paragraph shall not prohibit the court from issuing other injunctions against the named parties even if the time to which the injunction applies exceeds a total of three years.

Any order issued under this subsection shall be served by regular mail upon the chief of police of each county.

(g) The court may grant the prevailing party in an action brought under this section, costs and fees, including attorney's fees.

(h) A knowing or intentional violation of a restraining order or injunction issued pursuant to this section is a misdemeanor. The court shall sentence a violator to appropriate counseling and shall sentence a person convicted under this section as follows:

- (1) For a violation of an injunction or restraining order that occurs after a conviction for a violation of the same injunction or restraining order, a violator shall be sentenced to a mandatory minimum jail sentence of not less than forty-eight hours; and
- (2) For any subsequent violation that occurs after a second conviction for violation of the same injunction or restraining order, the person shall be sentenced to a mandatory minimum jail sentence of not less than thirty days.

The court may suspend any jail sentence, except for the mandatory sentences under paragraphs (1) and (2), upon appropriate conditions, such as that the defendant remain alcohol and drug-free, conviction-free, or complete court-ordered assessments or counseling. The court may suspend the mandatory sentences under paragraphs (1) and (2) where the violation of the injunction or restraining order does not involve violence or the threat of violence. Nothing in this section shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor offense.

(i) Nothing in this section shall be construed to prohibit constitutionally protected activity."

SECTION 2. Section 711-1106, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:



“(1) A person commits the offense of harassment if, with intent to harass, annoy, or alarm [another] any other person, that person:

- (a) Strikes, shoves, kicks, or otherwise touches another person in an offensive manner or subjects the other person to offensive physical contact;
- (b) Insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response or [which] that would cause the other person to reasonably believe that the actor intends to cause bodily injury to the recipient or another[,], or damage to the property of the recipient or another;
- (c) [Makes a telephone call or a facsimile transmission] Repeatedly makes telephone calls, facsimile, or electronic mail transmissions without purpose of legitimate communication [which would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another, or damage to the property of the recipient or another];
- (d) [Makes] Repeatedly makes a communication anonymously[,], or at an extremely inconvenient hour[, or in offensively coarse language which would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another, or damage to the property of the recipient or another]; [or]
- (e) [Makes repeated] Repeatedly makes communications, after being advised by the person to whom the communication is directed that further communication is unwelcome[.]; or
- (f) Makes a communication using offensively coarse language that would cause the recipient to reasonably believe that the actor intends to cause bodily injury to the recipient or another or damage to the property of the recipient or another.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 246

H.B. NO. 3666

A Bill for an Act Relating to Nuisance Abatement.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 712-1270, Hawaii Revised Statutes, is amended to read as follows:

**“§712-1270 Places used to commit offenses against public health and morals, a nuisance.** Every building, premises, or place used for the purpose of violating those laws pertaining to offenses against public health and morals contained in parts I, II, and IV of this chapter, except offenses under part IV which do

not involve the manufacture or distribution of drugs, and every building, premises, or place in or upon which the violations are held or occur in parts I, II, and IV, is a nuisance that shall be enjoined, abated, and prevented, regardless of whether it is a public or private nuisance."

SECTION 2. Section 712-1271, Hawaii Revised Statutes, is amended to read as follows:

**"[[§712-1271]] Suit to abate.** Whenever there is reason to believe that a nuisance as defined in this chapter is in existence, kept, or maintained in any county, the attorney general of the State or the prosecutor or prosecuting attorney of the respective counties shall, or any citizen of the State residing within such county may in the citizen's own name, or any organization, including, but not limited to a tenant organization within such county may in the organization's own name, maintain a suit to abate and prevent such nuisance and to perpetually enjoin the person or persons[,] causing the nuisance, or the owner, lessee, or agent of the building, premises, or place in or upon which the nuisance exists from directly or indirectly causing, maintaining, or permitting the nuisance."

SECTION 3. Section 712-1272, Hawaii Revised Statutes, is amended to read as follows:

**"[[§712-1272]] Temporary writ.** Whenever the existence of a nuisance is shown in a suit brought under this part to the satisfaction of the court or the judge thereof, either by verified petition or affidavit, or both, the court or judge thereof shall allow a temporary writ of injunction to abate and prevent the continuance or recurrence of such nuisance[.],<sup>1</sup> which injunction may include a provision prohibiting the person or persons causing the nuisance from residing in or entering into the building, premises, or place in or upon which the nuisance exists. The petition in such suit need not be verified, except in those suits brought by a citizen in the citizen's own name, or those suits brought by an organization in its own name, but shall be signed by the party bringing the same and shall include a certification that the complainant believes the allegations of the petition to be true."

SECTION 4. Section 712-1273, Hawaii Revised Statutes, is amended to read as follows:

**"[[§712-1273]] Suit to have precedence.** The suit when brought shall have precedence over all cases, excepting criminal proceedings, election contests, and hearings on injunctions, and in such suit evidence of the general reputation of the building, premises, or place shall be admissible for the purpose of proving the existence of the nuisance."

SECTION 5. Section 712-1274, Hawaii Revised Statutes, is amended to read as follows:

**"[[§712-1274]] Failure to prosecute.** If the petition is filed by a citizen[,], or by an organization, it shall not be dismissed by the complainant or for want of prosecution except upon a sworn statement by the complainant or the complainant's attorney, setting forth the reasons why the suit should be dismissed, and the dismissal ordered by the court. In case of failure to prosecute any such suit with reasonable diligence, or at the request of the complainant, the court, in its discretion, may substitute any other citizen or organization, including, but not limited to the attorney general or the prosecutor or prosecuting attorney of the county consenting

thereto for the complainant. If a suit is brought by a citizen or by an organization and the court finds that there was no reasonable ground or cause therefor, the costs shall be taxed against such citizen[.] or organization, except that no costs shall be taxed against state or county organizations.”

SECTION 6. Section 712-1275, Hawaii Revised Statutes, is amended to read as follows:

“**[§712-1275] Order of abatement.** If the existence of a nuisance is established in a suit as provided herein, an order of abatement shall be entered as a part of the judgment in the case, which order shall include a provision permanently prohibiting the person or persons causing the nuisance, if said person or persons are a party to the proceeding, from residing in or entering into the building, premises, or place in or upon which the nuisance exists. The court, on the application of the person, may suspend the prohibition if the person is participating in a court-approved treatment and monitoring program which addresses the person’s conduct which caused the nuisance. If the court determines that the person has successfully completed the program and that the person is not likely to again create a nuisance, the court may dissolve the injunction against the person. In the event that the court determines that an injunction against the person or persons causing the nuisance will not completely abate the nuisance or that one or more of the persons causing the nuisance are not parties to the proceeding, [and] the court shall also direct the effectual closing of the building, premises, or place, against its use for any purpose, and that it be kept closed for a period not exceeding one year, unless sooner released, as provided by section 712-1277. While the order remains in effect as to closing, the building, premises, or place shall remain in the custody of the court.”

SECTION 7. Section 712-1276, Hawaii Revised Statutes, is amended to read as follows:

“**[§712-1276] Costs and expenses.** For any costs or expenses incurred in the closing of the building, premises, or place and keeping it closed, or incurred in enforcing the injunction prohibiting the person or persons causing the nuisance from residing or entering into the building, premises, or place in or upon which the nuisance exists, as well as the costs and expenses incurred by the party bringing the action, a reasonable sum shall be allowed by the court.”

SECTION 8. Section 712-1277, Hawaii Revised Statutes, is amended to read as follows:

“**[§712-1277] Owner not guilty of contempt; may pay costs.** If the owner of the building, premises, or place has not been guilty of any criminal contempt of court in the proceedings, and appears and pays all costs, fees, and allowances which are a lien on the building, premises, or place and files a bond in a reasonable amount to be fixed by the court, with sureties, to be approved by the court or judge, conditioned that the owner will immediately abate any such nuisance that may exist at such building, premises, or place and prevent the same from being established or kept thereat for a period of one year thereafter, the court or the judge thereof, may, if satisfied of the owner’s good faith, order the [property] building, premises, or place closed under the order of abatement canceled so far as the same may relate to the closing of said [property] building, premises, or place. The release of the [property] building, premises, or place under the provisions of this section does not release it from any judgment, lien, penalty, or liability to which it may be subject by law.”

SECTION 9. Section 712-1278, Hawaii Revised Statutes, is amended to read as follows:

**“[[§712-1278]] Fine, costs, lien on place.** Any costs, expenses, and fines imposed against any owner of a business, premises or place in any proceedings under this part shall be a lien upon such business, premises, or place, to the extent of the interest of such person therein, enforceable and collectible by execution issued by the order of the court.”

SECTION 10. Section 712-1279, Hawaii Revised Statutes, is amended to read as follows:

**“[[§712-1279]] Termination of lease.** The notice by the owner of any business, premises, or place to the lessee that the lease will be revoked if the lessee continues the maintenance of the nuisance, and other action taken to revoke the lease or to obtain the termination of the nuisance shall be given appropriate consideration by the court in the determination of a criminal contempt action brought against the owner in connection with abatement procedures of this part.”

SECTION 11. Section 712-1280, Hawaii Revised Statutes, is amended to read as follows:

**“[[§712-1280]] Place.** “Place” as used in this part means any building, structure, or place, or any separate part or portion thereof, whether permanent or not, or the ground itself.”

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

**Note**

1. Should be underscored.

**ACT 247**

H.B. NO. 3711

A Bill for an Act Relating to Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:9-221, Hawaii Revised Statutes, is amended to read as follows:

**“§431:9-221 Limitations upon nonresident agent or broker.** A nonresident agent or broker is authorized to place insurance on a subject of insurance located in this State, only under all of the following conditions:

[(1) The insured:

- (A) If an individual, is not domiciled within this State, or
- (B) If a partnership, each partner is not domiciled within this State, or
- (C) If a corporation, is a foreign corporation within the meaning of chapter 415 or is a corporation wholly owned by such a foreign

- corporation, or is a corporation formed or organized under the laws of any territory of the United States;
- (2) Any negotiation between the nonresident agent or broker and the insured, leading up to the placement of the insurance, has taken place outside this State; provided that neither item (1) nor this paragraph shall be applicable to insurance of aircraft or cargo of such aircraft, or against liability, other than workers' compensation and employer's liability, arising out of the ownership, maintenance, or use of such aircraft;]
  - (1) Applicants for license as nonresident agent or broker shall prior to the issuance of any such license, personally take and pass to the satisfaction of the commissioner an examination given by the commissioner as a test of the applicant's qualifications and competence. The examination shall be the same examination that is mandated of resident agents and brokers;
  - (2) In addition to other applicable requirements, the application for a license shall be accompanied by a statement in writing of the insurance supervisory public officer of the nonresident's state of residence showing that the applicant is currently licensed therein as an agent or broker, as the case may be, as to substantially the same kind or kinds of insurance as proposed to be transacted under the Hawaii license applied for;
  - (3) The insurance is placed through a licensed general agent in this State of an authorized insurer; and
  - (4) The commission paid to the nonresident agent or broker by the licensed general agent in the State does not exceed the usual rate of commission paid to a resident solicitor."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 248

H.B. NO. 3760

A Bill for an Act Relating to Captive Insurance Companies.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 431:19-101, Hawaii Revised Statutes, is amended by amending the definition of "affiliated company" to read:

""Affiliated company" means any company in the same corporate system as a parent or a member organization by virtue of common ownership, control, operation, or management[.], or, in the case of a pure captive insurance company, that maintains a working relationship with, and whose business risks insured by the pure captive insurance company are similar or related to the business risks of, the parent insured by the pure captive insurance company."

SECTION 2. Section 431:19-108, Hawaii Revised Statutes, is amended to read as follows:

**“§431:19-108 Examinations and investigations.** (a) At least once a year, and whenever the commissioner determines it to be prudent, the commissioner, or a designated agent, shall visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this article. The commissioner, upon application, may enlarge the one-year period to three years; provided that the captive insurance company is subject to a comprehensive annual audit during that period of a scope satisfactory to the commissioner by independent auditors approved by the commissioner.

(b) The powers, authorities, and duties relating to examinations vested in and imposed upon the commissioner under section 431:2-301 through section 431:2-307 of the code are extended to and imposed upon the commissioner in respect to examinations of captive insurance companies.

(c) All examination reports conducted by the commissioner, or a designated agent of the commissioner, of any pure captive insurance company shall remain confidential unless the commissioner determines that the pure captive insurance company is in an adverse financial condition and the commissioner reasonably believes that the interest of the public necessitates the opening of the information contained in the examination report for public inspection.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 249

H.B. NO. 3766

A Bill for an Act Relating to Governmental Assistance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that between 1911 and 1936, Hamakua Sugar Company constructed over four hundred employee rental homes in ten camps along the Hamakua coast. In 1990, these rentals represented approximately sixteen per cent of the total number of occupied housing units in the North Hilo to Kukuihaele region. In August 1995, these rentals were transferred to the Hamakua Housing Corporation, a nonprofit entity, under a court-approved, bankruptcy settlement agreement. The plan is for the eventual conveyance of title to the occupants of the individual rentals. In addition to old age, these rentals currently suffer from significant deterioration. No major renovations or improvements have been made to these rentals since their original construction. As a result, significant improvements are needed for the residents to continue living in their communities.

The main priority is to upgrade the water distribution systems in six camps to county standards. These systems currently suffer from insufficient capacities and problems with turbidity, backflow contamination, and leakage. If the water distribution systems are upgraded, approximately one thousand three hundred twenty residents will benefit from improvements in water quality, reliability of service, fire protection, and overall public health and safety. In addition, the Hawaii department of water supply will benefit from a more efficient use of the limited water supply in the service area.

These improvements will provide greater stability in the lives of these residents, because it will mean that they can continue to live in their own homes. This will help to ensure that the residents can avoid homelessness and also improve their employability.

The purpose of this Act is to ensure that needed resources appropriated in previous years are available to assist the Hilo-Hamakua community in its efforts to restructure its economy and support its social structure. This Act extends to fiscal year 1996-1997, the authorization to expend the funds previously authorized in Act 228, Session Laws of Hawaii 1994; Act 241, Session Laws of Hawaii 1994; and Act 16, Special Session Laws of Hawaii 1995.

SECTION 2. Act 228, Session Laws of Hawaii 1994, as amended by Act 16, Special Session Laws of Hawaii 1995, is amended by amending sections 2 and 3 to read as follows:

“SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$600,000, or so much thereof as may be necessary, for fiscal year 1994-1995[,] to provide low-interest loans of up to \$10,000 each to employees and former employees of the Hilo Coast Processing Company and the Hamakua Sugar Company and former employees of Mauna Kea Agribusiness Company, sugar division, to provide for the payment of their monthly mortgage loan payment, which may include but not be limited to, principal and interest payments, real property taxes, and insurance. The appropriation made for the purposes authorized in this section shall not lapse at the end of the fiscal year for which the appropriation is made; provided that any appropriation that is unencumbered as of June 30, [1996,] 1997, shall lapse as of that date. The loans shall be limited to one loan per household and the rate of interest on loans made pursuant to this Act shall not exceed three per cent per annum. Interest earnings on funds appropriated and loans made pursuant to this Act may be used for administrative and other expenses necessary for administering the loan program. Loans made pursuant to this Act may not require repayment to begin for a period of two years after the loan agreement is executed. Loan proceeds distributed may be made directly to the borrower's note and mortgage holder to ensure timely payment of the borrower's mortgage payment. Guidelines for administering this loan program shall be established by the housing finance and development corporation.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$600,000, or so much thereof as may be necessary, for fiscal year 1994-1995[,] to enable the housing finance and development corporation to develop and implement a grant program to address administrative, maintenance, and critical infrastructure improvement costs to ensure the continued operation of Hamakua Sugar Plantation Camp Housing Units. The appropriation made for the purposes authorized in this section shall not lapse at the end of the fiscal year for which the appropriation is made; provided that any appropriation that is unencumbered as of June 30, [1996,] 1997, shall lapse as of that date.

[The housing finance and development corporation shall develop as part of this grant program a special rental subsidy program for employees, former employees who are in transition to other employment, and retirees of the Hamakua Sugar Company who are currently residing in the plantation camp areas.]”

SECTION 3. Act 241, Session Laws of Hawaii 1994, as amended by Act 16, Special Session Laws of Hawaii 1995, is amended by amending section 3 to read as follows:

“SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,500,000, or so much thereof as may be necessary, for fiscal year 1994-1995[,] to assist the Hilo-Hamakua community for the following purposes:

- (1) Resource/Family/Youth centers with outreach (5.50 FTE) workers and counseling services, and development of a child care services system;
- (2) Newspaper and community bulletin board;
- (3) Agricultural infrastructure development;
- (4) Aquaculture and community-based agricultural programs;
- (5) Primary health care center subsidies;
- (6) Transitional support employment and training for dislocated workers; and
- (7) Hamakua community liaison position.

Of the \$1,500,000 appropriation for fiscal year 1994-1995, \$560,000 shall be awarded to the Hamakua/North Hilo Agricultural Cooperative as a grant made pursuant to the provisions of chapter 42D, Hawaii Revised Statutes, for the purpose of assisting in the creation of a diversified agricultural economic base to assist workers and families along the Hilo-Hamakua Coast.

The appropriation made for the purposes authorized in this section shall not lapse at the end of the fiscal year for which the appropriation is made; provided that any appropriation which is unencumbered as of June 30, [1996,] 1997, shall lapse as of that date.”

SECTION 4. Act 16, Special Session Laws of Hawaii 1995, is amended by amending section 7 to read as follows:

“SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$360,000, or so much thereof as may be necessary, for fiscal year 1995-1996[,] for the continued operation of the lower Hamakua ditch to ensure a source of water for Hamakua farmers as set forth in the Bankruptcy Settlement Agreement. The appropriation made for the purposes authorized in this section shall not lapse at the end of the fiscal year for which the appropriation is made; provided that any appropriation that is unencumbered as of June 30, 1997, shall lapse as of that date.

The sum appropriated shall be expended by the department of agriculture.”

SECTION 5. Act 16, Special Session Laws of Hawaii 1995, is amended by amending sections 10, 11, 12, and 13 to read as follows:

“SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$520,000, or so much thereof as may be necessary, for fiscal year 1995-1996[,] for:

- (1) Various agricultural projects not funded by the United States Department of Defense and the agribusiness development corporation; and
- (2) The hiring of an agricultural specialist and an aquacultural specialist.

The appropriation made for the purposes authorized in this section shall not lapse at the end of the fiscal year for which the appropriation is made; provided that any appropriation that is unencumbered as of June 30, 1997, shall lapse as of that date.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the sum of \$550,000, or so much thereof as may be necessary, for fiscal



year 1995-1996[,] to create sustainable and expandable systems for community-based economic development in the following manner:

- (1) Facilitate the rebuilding of a healthy Hilo-Hamakua economy through continued operation of the Hilo-Hamakua community liaison office;
- (2) Support the Hilo-Hamakua community development corporation in its efforts to establish a funding mechanism for the long-term needs of the community that is eventually self-generating and self-sufficient;
- (3) Begin new, viable small businesses by providing seed and start-up capital to individuals who cannot qualify for traditional loans from conventional lending institutions through an economic development micro-enterprise loan and grant program;
- (4) Decrease the formidable physical dimensions of the fifty-mile Hilo-Hamakua community through an electronic project management and communications system;
- (5) Preserve the cultural heritage of the region and develop viable enterprises and job opportunities related to cultural heritage by implementing the cultural heritage corridor concept in four communities;
- (6) Support the needs of area residents as well as support the development of small businesses through various services provided by the community communications and work center located at Kalanianaʻole school; and
- (7) Award microloans.

The appropriation made for the purposes authorized in this section shall not lapse at the end of the fiscal year for which the appropriation is made; provided that any appropriation that is unencumbered as of June 30, 1997, shall lapse as of that date.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the sum of \$86,000, or so much thereof as may be necessary, for fiscal year 1995-1996[,] to provide wage-subsidized training opportunities for displaced sugar workers in skilled occupational areas. The appropriation made for the purposes authorized in this section shall not lapse at the end of the fiscal year for which the appropriation is made; provided that any appropriation that is unencumbered as of June 30, 1997, shall lapse as of that date.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 13. There is appropriated out of the general revenues of the State of Hawaii the sum of \$49,000, or so much thereof as may be necessary, for fiscal year 1995-1996[,] for the Hamakua-Hilo Coast teleservice/telework center to continue the promotion of electronic communications applications, including e-mail and teleconferencing, and to develop new computer-related work skills and training for the local work force. The appropriation made for the purposes authorized in this section shall not lapse at the end of the fiscal year for which the appropriation is made; provided that any appropriation that is unencumbered as of June 30, 1997, shall lapse as of that date.

The sum appropriated shall be expended by the high technology development corporation for the purposes of this Act."

SECTION 6. Act 16, Special Session Laws of Hawaii 1995, is amended by amending sections 15 and 16 to read as follows:

“SECTION 15. There is appropriated out of the general revenues of the State of Hawaii the sum of \$455,000, or so much thereof as may be necessary, for fiscal year 1995-1996[,] for the continuation of the Hilo-Hamakua support program to provide a variety of services, including:

- (1) Outreach and information and referral to families and other persons impacted by the closure of the two sugar companies;
- (2) The assistance provided by the Hamakua and Hilo Coast resource centers and satellites in north Hilo and Paauilo;
- (3) Programs and support for children and youth;
- (4) Assistance to groups and communities to participate in community planning regarding economic development, diversified agriculture, housing, and employment and training;
- (5) The promotion of collaborative efforts with other service providers;
- (6) Transportation services; and
- (7) The dissemination of information through various means, including a community newspaper.

The appropriation made for the purposes authorized in this section shall not lapse at the end of the fiscal year for which the appropriation is made; provided that any appropriation that is unencumbered as of June 30, 1997, shall lapse as of that date.

The sum appropriated shall be expended by the department of labor and industrial relations, office of community services for the purposes of this Act.

SECTION 16. There is appropriated out of the general revenues of the State of Hawaii the sum of \$40,000, or so much thereof as may be necessary, for fiscal year 1995-1996[,] for the provision of the following services for rural South Hilo: health assessments, information/referral assistance, short-term interventions, health education/monitoring, and activity coordination. The appropriation made for the purposes authorized in this section shall not lapse at the end of the fiscal year for which the appropriation is made; provided that any appropriation that is unencumbered as of June 30, 1997, shall lapse as of that date.

The sum appropriated shall be expended by the department of health for the purposes of this Act.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect on June 29, 1996.

(Approved June 18, 1996.)

## ACT 250

H.B. NO. 3817

A Bill for an Act Relating to Department of Taxation Publications.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that certain reports published by the department of taxation, tax research and planning office, are an important source of information for government in its decision-making and for the public. Since the tax department is indefinitely suspending publication of future issues of these reports due to budget restraints, new methods of financing the costs of publication and distribution are needed.

The purpose of this Act is to mandate continued publication of the reports in paper form. This Act also requires the department to begin distribution of the reports in commonly accessible electronic forms and to charge fees for paper and electronic versions of the reports.

SECTION 2. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§231- Publication of reports.** (a) The department of taxation shall publish reports on the following:

- (1) Hawaii income patterns—individuals;
- (2) Hawaii income patterns—corporations, proprietorships, and partnerships; and
- (3) Tax credits.

The department shall make each of these reports available in both paper form and commonly accessible electronic forms for a reasonable fee.

(b) The department shall explore and implement all reasonable methods of covering the costs of publication and distribution of the reports, including but not limited to:

- (1) Setting reasonable fees that will cover the costs of producing and distributing the reports in paper and electronic form; and
- (2) Negotiating licensing fees with commercial information providers for rights to carry the reports on-line or in other electronic storage methods.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 251**

H.B. NO. 3833

A Bill for an Act Relating to State Service Fees.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§304- Public meetings.** In establishing the resident tuition fees and the differential fees for nonresident students, the board of regents shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91. The fees may be established at an open public meeting subject to the requirements of chapter 92; provided that:

- (1) The open public meeting is held during or prior to the semester preceding the semester to which the fees apply; and
- (2) A copy of the schedule of resident tuition fees and the differential fees for nonresident students is filed in the office of the lieutenant governor prior to taking effect.”

SECTION 2. Section 92-28, Hawaii Revised Statutes, is amended to read as follows:

“§92-28 State service fees; increase or decrease of. Any law to the contrary notwithstanding, the fees or other nontax revenues assessed or charged by any board, commission, or other governmental agency[, with the approval of the governor,] may be increased or decreased by the body in an amount not to exceed fifty per cent of the statutorily assessed fee or nontax revenue, in order to maintain a reasonable relation between the revenues derived from such fee or nontax revenue and the cost or value of services rendered, comparability among fees imposed by the State, or any other purpose which it may deem necessary and reasonable; provided that:

- (1) The authority to increase or decrease fees or nontax revenues shall be subject to the approval of the governor and extend only to the following: chapters 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189, 231, 269, 271, [304, 305, 306, 308,] 321, 338, 373, 412, 415, 421, 425, 431, 438, 439, 440, 442, 447, 448, 452, 453, 455, 456, 457, 458, 459, 460, 461, 463, 464, 466, 467, 469, 471, 482, 485, 501, 502, 505, [514A,] 572, 574, and 846 (pt II);
- (2) The authority to increase or decrease fees or nontax revenues established by the University of Hawaii under chapters 304, 305, 306, and 308 shall be subject to the approval of the board of regents; provided that the board's approval of any increase or decrease in tuition for regular credit courses shall be preceded by an open public meeting held during or prior to the semester preceding the semester to which the tuition applies;
- [(2)] (3) This section shall not apply to judicial fees as may be set by any chapter cited in this section; and
- [(3)] Any increase or decrease in tuition by the University of Hawaii shall be preceded by a public hearing held at least one semester before the effective date of the proposed increase.]
- (4) The authority to increase or decrease fees or nontax revenues pursuant to this section shall be exempt from the public notice and public hearing requirements of chapter 91.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 252**

H.B. NO. 3916

A Bill for an Act Relating to Public Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 211, Session Laws of Hawaii 1994, is amended by amending section 7 to read as follows:

“SECTION 7. Notwithstanding any other law to the contrary, including chapter 171, Hawaii Revised Statutes, the departments are authorized to negotiate and enter into lease agreements in accordance with the provisions and limitations of this Act; provided that the authority granted by this Act shall expire on June 30, [1996;] 1998; and provided further that any lease agreement entered into pursuant to this Act shall not be affected by the June 30, [1996,] 1998, expiration of authority in accordance with this Act.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect on June 29, 1996.

(Approved June 18, 1996.)

## ACT 253

H.B. NO. 4008

A Bill for an Act Relating to Agricultural Loans.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 155-9, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Class E: Loans to cooperatives and corporations shall provide credit to farmers’ cooperative associations and corporations engaged in marketing, purchasing, and processing, and providing farm business services, including:

- (1) Facility loans to purchase or improve land, building, and equipment for an amount not to exceed \$500,000 and a term not to exceed twenty years; and
- (2) Operating loans to finance inventories of supplies, warehousing, and shipping commodities, extension of consumer credit to justified farmer-members, and other normal operating expenses for an amount not to exceed \$300,000 and a term not to exceed [three] seven years.

To be eligible, a cooperative or corporation shall have [at least seventy-five per cent] a majority of its board of directors and [seventy-five per cent] a majority of its membership as shareholders who meet the eligibility requirements of section 155-10 and who devote most of their time to farming operations, and the facility loans shall be for an amount not to exceed \$500,000 or eighty per cent of the cost of the project, whichever is the lesser.”

SECTION 2. Section 155-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) It also shall be lawful for the department of agriculture to require and accept as security for any loan:

- (1) A [second] junior mortgage [when any prior mortgage does not contain provisions which might jeopardize the security position of the department or the borrower’s ability to repay]; or
- (2) Written agreements such as an assignment of income.”

SECTION 3. Section 155-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created a special fund to be known as the [agriculture] agricultural loan revolving fund, from which moneys shall be loaned by the department of agriculture under this chapter. The department, by its board of agriculture, may transfer moneys from the [agriculture] agricultural loan revolving fund to the aquaculture loan revolving fund, from which moneys shall be disbursed by the department pursuant to chapter 219, and may transfer moneys from that revolving fund to the [agriculture] agricultural loan revolving fund for disbursement pursuant to this chapter; provided that:

- (1) The amount of moneys transferred shall not exceed \$1,000,000 for each revolving fund within the calendar year; and
- (2) Twenty days prior to the convening of each regular session of the legislature, the department shall report to the legislature all transfers that were made between the [agriculture] agricultural loan revolving fund and the aquaculture loan revolving fund during the preceding calendar year and the balance of each revolving fund as of December 31 of each year; and
- (3) This authority to transfer moneys shall expire on June 16, 1995].”

SECTION 4. Section 219-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established a special fund to be known as the aquaculture loan revolving fund from which moneys shall be loaned by the department of agriculture under this chapter. The department, by its board of agriculture, may transfer moneys from the aquaculture loan revolving fund to the [agriculture] agricultural loan revolving fund, from which moneys shall be disbursed by the department pursuant to chapter 155, and may transfer moneys from that revolving fund to the aquaculture loan revolving fund for disbursement pursuant to this chapter; provided that:

- (1) The amount of moneys transferred shall not exceed \$1,000,000 for each revolving fund within the calendar year; and
- (2) Twenty days prior to the convening of each regular session of the legislature, the department shall report to the legislature all transfers that were made between the aquaculture loan revolving fund and the [agriculture] agricultural loan revolving fund during the preceding calendar year and the balance of each revolving fund as of December 31 of each year; and
- (3) This authority to transfer moneys shall expire on June 16, 1995].”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 254

H.B. NO. 4063

A Bill for an Act Relating to Higher Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that 1996 has been declared the "Year of the Hawaiian Language" by the State of Hawaii, in an effort to draw attention to revitalize the Hawaiian language, in the public and private lives in our State.

The legislature notes that the Hawaiian language is one of the constitutionally recognized official languages of this State.

The legislature further finds that there is a need to establish a center for excellence at the University of Hawaii at Hilo campus that will conduct all its business in the Hawaiian language, and that will serve as a focal point for the State's efforts to revitalize the Hawaiian language through teacher training, graduate study of Hawaiian, community outreach, and planning for general education in Hawaiian for future generations of Hawaiian speakers.

The legislature further finds that in these times of financial difficulty there is a need for partnership between the office of Hawaiian affairs and the University of Hawaii system, if state and Hawaiian community goals relative to Hawaiian language education are to be achieved.

SECTION 2. There is established a Hawaiian language task force, to be placed within the University of Hawaii for administrative purposes only. The task force shall consist of, but is not limited to, representatives from the following:

- (1) University of Hawaii at Hilo;
- (2) Office of Hawaiian affairs;
- (3) Department of education;
- (4) Hawaiian community; and
- (5) General public.

Nominations shall be submitted by the chancellor of the University of Hawaii at Hilo to the University of Hawaii president within thirty days following the effective date of this Act. The president of the University of Hawaii shall appoint the members of the task force within forty-five days following the effective date of this Act. The members shall select a chairperson. Members shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

The goal of the task force is to make recommendations on how to incorporate the following into the center of excellence:

- (1) The establishment of a Hawaiian language college, or other appropriate entity, similar to the tribal colleges of Native Americans, which would make the Hawaiian language college eligible for federal funding under the Native American Language Act of 1990;
- (2) A Hawaiian studies department for a graduate program in Hawaiian language and literature;
- (3) A Hawaiian studies department for a separate Kaiapuni Hawaii teacher training program;
- (4) A Hale Kuamoo Hawaiian language center for curriculum development; and
- (5) Sources of funding for Hawaiian language college and Hale Kuamoo Hawaiian language center for curriculum development.

SECTION 3. The Hawaiian language task force shall report its findings and recommendations including an action plan for the creation of a Hawaiian language

college or other appropriate entity that can be submitted to the University of Hawaii board of regents and the office of Hawaiian affair's board of trustees for approval, and to the legislature no later than twenty days prior to the beginning of the 1997 regular session, and shall cease to exist on June 30, 1997.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 255

H.B. NO. 4074

A Bill for an Act Relating to Land Exchange.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that it is in the public interest to enter into a land exchange with the George Galbraith Estate involving private lands north of Wahiawa, Oahu, for public lands. The purpose of this land exchange is to provide the State with additional agricultural lands in central Oahu.

SECTION 2. The board of land and natural resources may enter into negotiations for a land exchange with the George Galbraith Estate which will enable the State to acquire private lands north of Wahiawa, Oahu, in exchange for conveying public lands; provided that:

- (1) In determining the "fair market" value of the private land, the private land shall be appraised as agricultural;
- (2) The "fair market" value of the private land and the public land shall be separately determined by a disinterested qualified appraiser or appraisers, and the cost shall be borne equally between the owner and the board of land and natural resources;
- (3) No payment by the State shall be required should the private land exceed the value of the public land, but any difference in value of the public land over the private land shall be paid to the State at the time of the exchange; provided that no exchange shall be made should the value of the public land exceed one hundred twenty per cent of the value of the private land; and
- (4) No land exchange shall be consummated if the private land is included as part of a site listed on the National Priorities List (NPL) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

SECTION 3. The eighteenth legislature authorizes the board of land and natural resources to enter into land exchange negotiations for private lands in Wahiawa, Oahu, owned by the George Galbraith Estate.

The board of land and natural resources and the department of health shall submit a report to the legislature not later than twenty days prior to the convening of the 1997 regular session which shall include the following:

- (1) The location and area of the parcels of land to be exchanged;
- (2) The value of the lands to be conveyed by the State and the George Galbraith Estate;
- (3) The name or names of the appraiser or appraisers involved;



- (4) The date of the appraisal or appraisals which shall not be more than six months prior to the date of final approval of the exchange by the board of land and natural resources;
- (5) Whether or not the land or lands to be conveyed by the State are ceded lands; and
- (6) An update on the Environmental Protection Agency's and Department of Health's efforts to remove the Galbraith lands from the NPL pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 256

S.B. NO. 3134

A Bill for an Act Relating to Theft of Utility Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the theft of utility services has a significant impact on the community. The legislature also finds that utility services theft creates potentially hazardous conditions such as electrical burns to persons. Furthermore, utility services theft diverts utility revenues, which in turn decreases or results in a loss of revenue to the State and increases costs for consumers.

Therefore, the legislature finds that it is necessary to prosecute utility services theft cases and to deter the theft of utility services in the future. This should result in an increase in city and state tax revenue, safer delivery of utility services to customers, and a benefit to all ratepayers.

Accordingly, the purpose of this Act is to define the criminal act of theft of utility services.

SECTION 2. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§708- Theft of utility services.** (1) For purposes of this section:

“Customer” means the person in whose name the utility service is provided.

“Divert” means to change the intended course or path of utility services without the authorization or consent of the utility.

“Person” means any individual, partnership, firm, association, corporation, or other legal entity.

“Reconnection” means the reconnection of utility service by a customer or other person after service has been lawfully disconnected by the utility.

“Utility” means any public utility as defined in section 269-1, that provides electricity, gas, or water services.

“Utility service” means the provision of electricity, gas, water, or any other service provided by the utility for compensation.

(2) A person commits the offense of theft of utility services if the person, with intent to obtain utility services for the person's own or another's use without paying the full lawful charge therefor, or with intent to deprive any utility of any part of the full lawful charge for utility services it provides, commits, authorizes, solicits, aids, or abets any of the following:

- (a) Diverts, or causes to be diverted utility services, by any means whatsoever;
- (b) Prevents any utility meter, or other device used in determining the charge for utility services, from accurately performing its measuring function;
- (c) Makes or causes to be made any connection or reconnection with property owned or used by the utility to provide utility services, without the authorization or consent of the utility; or
- (d) Uses or receives the direct benefit of all or a portion of utility services with knowledge or reason to believe that a diversion, prevention of accurate measuring function, or unauthorized connection existed at the time of use or that the use or receipt was otherwise without the authorization or consent of the utility.

(3) In any prosecution under this section, the presence of any of the following objects, circumstances, or conditions on premises controlled by the customer, or by the person using or receiving the direct benefit of all or a portion of utility services obtained in violation of this section, shall create a rebuttable presumption that the customer or person intended to and did violate this section:

- (a) Any instrument, apparatus, or device primarily designed to be used to obtain utility services without paying the full lawful charge therefor; or
- (b) Any meter that has been diverted or prevented from accurately performing its measuring function so as to cause no measurement or inaccurate measurement of utility services.

(4) A person commits the offense of theft of utility services in the first degree in cases where the theft:

- (a) Accrues to the benefit of any commercial trade or business, including any commercial trade or business operating in a residence, home, or dwelling;
- (b) Is obtained through the services of a person hired to commit the theft of utility services; in which event, both the person hired and the person responsible for the hiring shall be punished under this section as a class C felony; or
- (c) Accrues to the benefit of a residence, home, or dwelling where the value of the theft of utility services exceeds \$300.

Theft of utility services in the first degree is a class C felony, and shall be sentenced in accordance with chapter 706, except that for a first offense the court shall impose a minimum sentence of a fine of at least \$1000 or two times the value of the theft, whichever is greater.

(5) A person commits theft of utility services in the second degree if the person commits theft of utility services other than as provided in section 708- (4). Theft of utility services in the second degree is a misdemeanor and shall be sentenced in accordance with chapter 706, except that for a first offense the court shall impose a minimum sentence of a fine of \$500, with an increase of \$500 for each succeeding conviction under section 708- (5)."

SECTION 3. Section 708-827, Hawaii Revised Statutes, is amended to read as follows:

**"§708-827 Criminal tampering in the second degree.** (1) A person commits the offense of criminal tampering in the second degree if the person intentionally: (a) Tamper[s] tampers with property of another person, without the other person's consent, with intent to cause substantial inconvenience to that person or to another; or

(b) Tamper or makes connection with property of a utility without its consent].

(2) Criminal tampering in the second degree is a petty misdemeanor.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 257**

S.B. NO. 3170

A Bill for an Act Relating to Waimanalo.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that certain farmers in the Waimanalo area on the island of Oahu, through no fault of their own, conduct farming activities on nonagriculturally-zoned land. Other Waimanalo farms may have been deemed ineligible because of some confusion in providing information to qualify for a lease. As such, these farmers are only eligible to obtain a month-to-month revocable permit from the department of land and natural resources to conduct their farming activities.

These revocable permittees, some of whom have occupied these lands for long periods of time, are not able to obtain financing for improving their farm because financing is not available due to the lack of long-term tenure. Because their tenure is on a month-to-month basis, these farmers do not have the security of assured long-term land tenure. Hence, these farmers who depend on the state land for their livelihood are constrained by their uncertain tenure from developing the land and using it more productively.

The legislature also finds that in an effort to address the concerns of Waimanalo area farmers, Act 237, Session Laws of Hawaii 1988 (Act 237), was enacted to authorize the department of land and natural resources to enter into lease negotiations with revocable permittees on state-owned agricultural lands so that the permittees would be able to establish long-term land tenure, thereby allowing the permittees to secure financing for farm productivity enhancement. Unfortunately, because Act 237 limited the opportunity to obtain a long-term lease to only those qualified revocable permittees situated on agriculturally-zoned land, those revocable permittees farming on nonagriculturally-zoned lands or deemed ineligible for other reasons could not qualify for long-term lease agreements with the State.

The purpose of this Act is to authorize the department of land and natural resources to enter into long-term lease negotiations and execute long-term leases with those revocable permittees who are situated in the Waimanalo area, who are farming, and previously deemed ineligible to obtain a lease under Act 237.

SECTION 2. (a) The department of land and natural resources shall enter into long-term lease negotiations and execute long-term leases with qualified revo-

cable permittees in the Waimanalo area who were deemed ineligible to obtain long-term leases under Act 237.

- (b) The department may negotiate and enter into leases with any person who:
  - (1) As of July 1, 1988, held a revocable permit to conduct agricultural activities on nonagriculturally- or agriculturally-zoned lands; or
  - (2) Has formerly held an agricultural lease which expired within the last ten years preceding the effective date of this Act and has continued to occupy the state land; and
  - (3) Does not own agriculturally-zoned land of twenty-five acres or more in the State, individually or jointly with the person's spouse, or whose spouse does not own twenty-five acres or more of agriculturally-zoned land in the State.

SECTION 3. The land eligible for lease negotiations under this section are limited to those lands:

- (1) Nonagriculturally-zoned land used for agricultural purposes;
- (2) Agriculturally-zoned land used for agricultural purposes; and
- (3) Not needed by any state or county agency for any other public purpose.

SECTION 4. In negotiating and executing a lease as authorized, the board shall:

- (1) Require the appraisal of the parcel in accordance with section 171-17(b), Hawaii Revised Statutes;
- (2) Impose such other lease provisions, restrictions, and conditions as provided by sections 171-35, 171-36, and 171-37, Hawaii Revised Statutes, as may be required to protect the State's interests;
- (3) Require the payment of a premium, computed at twenty-five per cent of annual lease rent, with the premium to be added to the annual lease rent for each year of the lease equal to the number of years the lessee has occupied the land, except the premium period shall not exceed four years; and
- (4) Recover from the lessee the costs of expenditures required by the department to convert the parcel into leasehold.

SECTION 5. Within six months from the effective date of this Act, the department of land and natural resources shall notify in writing the permittees of lands eligible for lease negotiations under this Act and shall inform the permittees of the terms, conditions, and restrictions provided by this Act. Any permittee may apply for a lease; provided that the application shall be submitted to the department of land and natural resources in writing within thirty days from the date of receipt of notification; provided further that the department of land and natural resources may require documentary proof from any applicant to determine that the applicant meets eligibility and qualification requirements for a lease as specified by this Act.

SECTION 6. The department of land and natural resources shall cooperate with reclassification activities initiated by revocable permittees farming nonagriculturally-zoned lands in the Waimanalo area to have their lands reclassified from nonagricultural to agricultural use.

SECTION 7. This Act shall take effect upon its approval and shall be repealed on July 1, 1999.

(Approved June 18, 1996.)

## ACT 258

S.B. NO. 3248

A Bill for an Act Relating to Ocean Recreation Management.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 200-37, Hawaii Revised Statutes, is amended to read as follows:

**“§200-37 Operation of thrill craft; parasailing; water sledding; commercial high speed boating.** (a) No person shall operate a thrill craft unless the person is fifteen years of age or older.

(b) The department shall adopt rules to designate areas where, and time periods during which, thrill craft may be operated and parasailing, water sledding, and commercial high speed boating may be engaged in.

(c) No person shall operate a thrill craft in the waters of the State, except:

- (1) In areas and during time periods designated by the department; and
- (2) Through areas designated by the department to serve as avenues for the ingress and egress of thrill craft between the areas designated under paragraph (1) and the shore.

(d) No person shall:

- (1) Engage in parasailing; or
- (2) Operate a motorized vessel towing a person engaged in parasailing; on or above the waters of the State, except on or above areas and during time periods designated by the department.

(e) No person shall:

- (1) Engage in water sledding; or
- (2) Operate a motorized vessel towing a person engaged in water sledding; in the waters of the State, except in areas and during time periods designated by the department.

(f) No person shall engage in commercial high speed boating or operate an open power boat capable of exceeding [40] forty miles per hour for commercial high speed boating purposes in the waters of the State, except:

- (1) In areas, along routes, and during time periods designated by the department; and
- (2) In accordance with a permit issued by the department.

(g) During all weekends and state and federal holidays, no commercial operator shall operate a thrill craft, or engage in parasailing, water sledding, or commercial high speed boating, or operate a motor vessel towing a person engaged in water sledding or parasailing in Maunalua Bay on Oahu as provided for in section 200-38.

(h) On Sundays, all commercial ocean recreation activities, including those listed in this section, shall be prohibited on Oahu in Maunalua Bay as provided for in section 200-38.

(i) Between December 15 and May 15 of each year, no person shall operate a thrill craft, or engage in parasailing, water sledding, or commercial high speed boating, or operate a motor vessel towing a person engaged in water sledding or parasailing on the west and south shore of Maui as provided in section 200-38.

(j) All commercial use and operator permits issued by the department for commercial thrill craft, and parasailing activities shall be [nontransferable and shall expire upon the dissolution, sale, or transfer of any or all interests in the corporation, business entity, or person to which the permit was originally issued.] fully transferable upon the payment of a business transfer fee in an amount determined by the department, which shall be no less than ten per cent of the transfer price; provided

that no more than one transfer every two years shall be authorized with respect to any given permit.

(k) The department may immediately revoke a commercial use permit without a hearing for any activity that endangers or may endanger the health or safety of passengers or the public, and may suspend or revoke a commercial use permit for violation of any rules of the department if, after seventy-two hours notice by the department of the violation, the permit holder fails to cure the violation; provided that the permit holder shall have ten days from receipt of the notice of suspension or revocation to request in writing an administrative hearing. The administrative hearing is solely for the purpose of allowing the permit holder to contest the basis for the suspension or revocation of the permit. The hearing shall be held within five working days of the department's receipt of the written request. The chairperson shall adopt rules pursuant to chapter 91 to implement the procedures governing the administrative hearing process. Within ten days after the conclusion of the hearing, the department shall either:

- (1) Lift the suspension;
- (2) Suspend the permit for a period of not longer than one year; or
- (3) Revoke the permit.

(l) All new commercial use and operator permits issued by the department for commercial thrill craft, and parasailing activities after the effective date of this Act shall be issued at public auction.

(m) Each commercial use and operator permit issued by the department for commercial thrill craft, and parasailing activities shall be valid for five years from the date of issuance and shall be renewed by the department for additional five-year periods, not to exceed a maximum of ten years; provided that the permit holder shall have met the following conditions:

- (1) The permit holder shall be in compliance with all applicable rules of the department;
- (2) The permit holder shall have timely filed and paid all applicable state taxes during the year; and
- (3) The permit holder shall have a good safety record regarding the operation of a commercial thrill craft, or parasailing activity.

(n) Upon expiration of the ten year period, the permit may be offered for public auction as provided in this chapter; provided that the previous permit holder shall be offered the right of first refusal in accordance with departmental rules; and provided further that the permit holder shall agree to match the highest bid offered at the public auction.

(o) All commercial use and operator permits issued by the department for commercial thrill craft, and parasailing activities shall be subject to an annual review by the department which shall include but not be limited to:

- (1) The permit holder's compliance with applicable rules of the department;
- (2) The permit holder's timely filing and payment of all applicable state taxes during the year; and
- (3) The permit holder's safety record regarding the operation of a commercial thrill craft, or parasailing activity.

(p) The department shall adopt rules to encourage water safety education and programs with respect to thrill craft, or parasailing activities."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall not apply to existing permits issued by the department of land and natural resources pursuant to section 200-39, Hawaii

Revised Statutes. Upon the repeal of section 200-39, Hawaii Revised Statutes, the provisions of chapter 200, Hawaii Revised Statutes, shall apply to the Kaneohe bay ocean use activities regulated by the department of land and natural resources.

SECTION 4. This Act shall take effect upon its approval; provided that the term of each commercial use and operator permit validly issued as of the effective date of this Act shall be extended by the department to conform with this Act if the permit holder:

- (1) Is in compliance with applicable rules of the department;
- (2) Has timely filed and paid all applicable state taxes during the year; and
- (3) Has a good safety record regarding the operation of a commercial thrill craft or parasailing activity;

provided further that no permit validly issued as of the effective date shall be put up for public auction by operation of this Act until the end of the extended term of the permit.

(Approved June 18, 1996.)

## ACT 259

H.B. NO. 3493

A Bill for an Act Relating to Newborn Metabolic Screening.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 321-291, Hawaii Revised Statutes, is amended to read as follows:

**“[[§321-291]] Tests for phenylketonuria, hypothyroidism, and other metabolic diseases.** (a) The department of health may specify diseases to be screened for in newborn infants and methods to be employed[,] to best prevent mortality and morbidity within the population of the State.

(b) The person in charge of each institution caring for newborn infants and the responsible physician attending the birth of a newborn or the person assisting the birth of a child not attended by a physician, shall ensure that every infant in the person's care be tested for phenylketonuria, hypothyroidism, and any other disease that may be specified by the department of health; provided that this section shall not apply if the parents, [guardian,] guardians, or other [person] persons having custody or control of the child object thereto on the grounds that the tests conflict with their religious tenets and beliefs and written objection is made a part of the infant's medical record.

(c) The department of health shall adopt rules pursuant to chapter 91, necessary for the purposes of this section, including, but not limited to:

- (1) Administration of newborn screening tests;
- (2) Quality and cost control of screening tests;
- (3) [Keeping] Retention of records and related data;
- (4) Reporting of positive test results;
- (5) Guidelines for care, treatment, and follow up of infants with positive test results;
- (6) Informing parents about the purposes of these tests; and
- (7) Maintaining the confidentiality of affected families.

(d) There is created in the treasury of the State the newborn metabolic screening special fund. All moneys for newborn metabolic screening services collected under this chapter shall be deposited in the newborn metabolic screening

special fund to be used for the payment of its lawful operating expenditures, including but not limited to laboratory testing, follow-up testing, educational materials, continuing education, quality assurance, equipment, and indirect costs.

(e) The director shall submit an annual report to the legislature twenty days prior to the convening of each regular session, identifying all fund balances, transfers, and expenditures made from the newborn metabolic screening special fund, and the purposes for each expenditure."

SECTION 2. From July 1, 1996 to June 30, 1997, the department shall charge a fee of \$4.00 to birthing facilities for each newborn screening kit. This money shall be deposited into the special fund, to cover the costs of the newborn screening program. During this period, the department shall not be responsible for the costs of laboratory and follow-up testing.

SECTION 3. The department shall convene a panel no later than July 1, 1996, to develop a plan for providing newborn screening services to the community. The plan shall address the number of screening tests to be performed, the feasibility of using a centralized laboratory, and newborn screening fees. The panel shall consist of but not be limited to health care providers, health care insurers, laboratories, and other appropriate parties from the medical community. The panel shall submit a plan to the department no later than twenty days prior to the convening of the regular session of 1997.

SECTION 4. The department shall not adopt rules to increase the number of newborn screening tests until the plan is completed.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval; provided that section 2 shall take effect on July 1, 1996, and shall be repealed on June 30, 1997.

(Approved June 19, 1996.)<sup>1</sup>

**Note**

1. This Act was approved on June 19, 1996, which is after the approval date (June 18, 1996) of Acts 266 through 286 and Act 288.

**ACT 260**

H.B. NO. 3512

A Bill for an Act Relating to Workers' Compensation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 386, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§386- Workers' compensation benefits facilitator unit.** (a) There is established within the department of labor and industrial relations the workers' compensation benefits facilitator unit. All professional and clerical employees of the unit shall be appointed by the director and shall be subject to chapters 76 and 77.

(b) Facilitators of the unit shall have the following duties and responsibilities:

- (1) Assist injured workers in filing their workers' compensation claims under this chapter;
- (2) Assist insurers, employers, and providers; and
- (3) Facilitate the workers' compensation claims process.



(c) All expenses incurred by the director in establishing the unit shall be paid from the special compensation fund.”

SECTION 2. Section 386-21, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The liability of the employer for medical care, services, and supplies shall be limited to the charges computed as set forth in this section. The director shall make determinations of the charges and adopt fee schedules based upon those determinations. [As of June 29, 1995,] Effective January 1, 1997, and for each succeeding [fiscal] calendar year thereafter, the charges shall not exceed one hundred ten per cent of fees prescribed in the Medicare Resource Based Relative Value Scale system applicable to Hawaii as prepared by the United States Department of Health and Human Services, except as provided in this subsection. The rates or fees provided for in this section shall be adequate to ensure at all times the standard of services and care intended by this chapter to injured employees.

If the director determines that an allowance under the Medicare program is not reasonable, or if a medical treatment, accommodation, product, or service existing as of June 29, 1995, is not covered under the Medicare program, the director [shall,] may, at any time, establish an additional fee schedule or schedules not exceeding the prevalent charge for fees for services actually received by providers of health care services to cover charges for that treatment, accommodation, product, or service. If no prevalent charge for a fee for service has been established for a given service or procedure, the director shall adopt a reasonable rate that shall be the same for all providers of health care services to be paid for that service or procedure.

The director shall update the schedules required by this section [annually.] every three years or annually, as required. The updates shall be based upon:

- (1) Future charges or additions prescribed in the Medicare Resource Based Relative Value Scale system applicable to Hawaii as prepared by the United States Department of Health and Human Services; or
- (2) A statistically valid survey by the director of prevalent charges for fees for services actually received by providers of health care services or based upon the information provided to the director by the appropriate state agency having access to prevalent charges for medical fee information.

When a dispute exists between an insurer or self-insured employer and a medical service provider regarding the amount of a fee for medical services, the director may resolve the dispute in a summary manner as the director may prescribe; provided that a provider shall not charge more than the provider’s private patient charge for the service rendered.”

SECTION 3. Section 386-26, Hawaii Revised Statutes, is amended to read as follows:

**“§386-26 Guidelines on frequency of treatment and reasonable utilization of health care and services.** The director shall issue guidelines for the frequency of treatment and for reasonable utilization of medical care and services by health care providers that are considered necessary and appropriate under this chapter.

[The frequency and extent of treatment shall not exceed the nature of the injury and the process a recovery requires; provided that no authorization shall be required for the initial five treatments. After the initial five treatments, in accordance with guidelines established by the director under this chapter, the director may authorize no more than ten additional treatments. For injuries requiring more than

fifteen treatments, the director may authorize additional treatments upon a finding that such treatments are medically necessary and appropriate.]

The guidelines shall be adopted pursuant to chapter 91 and shall not interfere with the injured employee's rights to exercise free choice of physicians under section 386-21.

In addition, the director shall adopt updated medical fee schedules referred to in section 386-21 and where deemed appropriate shall establish separate fee schedules for services of health care providers as defined in section 386-1 to become effective no later than June 30, 1986, in accordance with chapter 91."

SECTION 4. Section 386-79, Hawaii Revised Statutes, is amended to read as follows:

**"§386-79 Medical examination by employer's physician.** After an injury and during the period of disability, the employee, whenever ordered by the director of labor and industrial relations, shall submit [oneself] to examination, at reasonable times and places, by a duly qualified physician or surgeon designated and paid by the employer. The employee shall have the right to have a physician or surgeon designated and paid by the employee present at the examination, which right, however, shall not be construed to deny to the employer's physician the right to visit the injured employee at all reasonable times and under all reasonable conditions during total disability.

If an employee refuses to submit [oneself] to, or in any way obstructs[,] such examination, the employee's right to claim compensation for the work injury shall be suspended until the refusal or obstruction ceases and no compensation shall be payable for the period during which the refusal or obstruction continues.

In cases where the employer is dissatisfied with the progress of the case or where major and elective surgery, or either, is contemplated, the employer may appoint a physician or surgeon of the employer's choice who shall examine the injured employee and make a report to the employer. If the employer remains dissatisfied, this report may be forwarded to the director.

Employer requested examinations [ordered by the director] under this section shall not exceed more than one per case unless good and valid reasons exist with regard to the medical progress of the [claimant's] employee's treatment. The cost of conducting the ordered medical examination shall be limited to the complex consultation charges governed by the medical fee schedule established pursuant to section 386-21(c)."

SECTION 5. Section 386-98, Hawaii Revised Statutes, is amended to read as follows:

**"§386-98 Fraud violations and penalties.** (a) A fraudulent insurance act, under this chapter, shall include acts or omissions committed by any person who intentionally or knowingly [and fraudulently intends] acts or omits to act so as to obtain benefits, deny benefits, obtain benefits compensation for services provided, or provides legal assistance or counsel to obtain benefits or recovery through fraud or deceit by doing the following:

- (1) Presenting, or causing to be presented, any false information on an application;
- (2) Presenting, or causing to be presented, any false or fraudulent claim for the payment of a loss;
- (3) Presenting multiple claims for the same loss or injury, including presenting multiple claims to more than one insurer except when these

multiple claims are appropriate and each insurer is notified immediately in writing of all other claims and insurers;

- (4) Making, or causing to be made, any false or fraudulent claim for payment or denial of a health care benefit;
- (5) Submitting a claim for a health care benefit that was not used by, or on behalf of, the claimant;
- (6) Presenting multiple claims for payment of the same health care benefit;
- (7) Presenting for payment any undercharges for health care benefits on behalf of a specific claimant unless any known overcharges for health care benefits for that claimant are presented for reconciliation at that same time;
- [(8)] Assisting, abetting, soliciting, or conspiring with any person who engages in an unlawful act as defined under this section;
- [(9)] (8) Misrepresenting or concealing a material fact;
- [(10)] (9) Fabricating, altering, concealing, making a false entry in, or destroying a document;
- [(11)] (10) Making, or causing to be made, any false or fraudulent statements with regard to entitlements or benefits, with the intent to discourage an injured employee from claiming benefits or pursuing a workers' compensation claim; or
- [(12)] (11) Making, or causing to be made, any false or fraudulent statements or claims by, or on behalf of, a client with regard to obtaining legal recovery or benefits.

(b) No employer shall wilfully make a false statement or representation to avoid the impact of past adverse claims experience through change of ownership, control, management, or operation to directly obtain any workers' compensation insurance policy.

(c) It shall be inappropriate for any discussion on benefits, recovery, or settlement to include the threat or implication of criminal prosecution. Any threat or implication shall be immediately referred in writing to:

- (1) The state bar if attorneys are in violation;
- (2) The insurance commissioner if insurance company personnel are in violation; or
- (3) The regulated industries complaints office if health care providers are in violation; or
- (4) The department and the state ethics commission if hearings officers are in violation],

for investigation and, if appropriate, disciplinary action.

(d) [A criminal] An offense under [this section] subsections (a) and (b) shall constitute a:

- (1) Class C felony if the value of the moneys obtained or denied is not less than \$2,000;
- (2) Misdemeanor if the value of the moneys obtained or denied is less than \$2,000; or
- (3) Petty misdemeanor if the providing of false information did not cause any monetary loss.

Any person subject to a criminal penalty under this section shall be ordered by a court to make restitution to an insurer or any other person for any financial loss sustained by the insurer or other person caused by the fraudulent act.

(e) In lieu of the criminal penalties set forth in subsection (d), any person who violates [this section] subsections (a) and (b) may be subject to the administrative penalties of restitution of benefits or payments fraudulently received under this chapter, whether received from an employer, insurer, or the special compensation

fund, to be made to the source from which the compensation was received, and one or more of the following:

- (1) A fine of not more than \$10,000 for each violation;
- (2) Suspension or termination of benefits in whole or in part;
- (3) Suspension or disqualification from providing medical care or services, vocational rehabilitation services, and all other services rendered for payment under this chapter;
- (4) Suspension or termination of payments for medical, vocational rehabilitation and all other services rendered under this chapter;
- (5) Recoupment by the insurer of all payments made for medical care, medical services, vocational rehabilitation services, and all other services rendered for payment under this chapter; or
- (6) Reimbursement of attorney's fees and costs of the party or parties defrauded.

(f) With respect to the administrative penalties set forth in subsection (e), no penalty shall be imposed except upon consideration of a written complaint that specifically alleges a violation of this section occurring within two years of the date of said complaint. A copy of the complaint specifying the alleged violation shall be served promptly upon the person charged. The director or board shall issue, where a penalty is ordered, a written decision stating all findings following a hearing held not fewer than twenty days after written notice to the person charged. Any person aggrieved by the decision may appeal the decision under sections 386-87 and 386-88."

SECTION 6. Chapter 386, Hawaii Revised Statutes, is amended by amending the title of part V, subpart C to read as follows:

**"C. PUBLIC BOARD MEMBERS, RESERVE POLICE OFFICERS,  
POLICE CHAPLAINS, VOLUNTEER FIREFIGHTERS, VOLUNTEER  
BOATING ENFORCEMENT OFFICERS, AND VOLUNTEER  
CONSERVATION AND RESOURCES ENFORCEMENT OFFICERS"**

SECTION 7. Section 386-181, Hawaii Revised Statutes, is amended to read as follows:

**"§386-181 Generally.** (a) As used in this section[, "public]:

"Police chaplain" means a member of an authorized chaplaincy program of a county police department who performs services in a voluntary and unpaid capacity under the authorized direction of an officer of the department.

"Public board" means a governmental body, regardless of its designation, duly created under authority vested by law for the purposes of performing quasi-judicial, administrative, or advisory functions[; "reserve].

"Reserve police officer" means a member of an authorized reserve force of a county police department who performs services in a voluntary and unpaid capacity under the authorized direction of an officer of the department[; "volunteer firefighter" means a person who performs services for a county fire department in a voluntary and unpaid capacity under the authorized direction of an officer of the department; "volunteer boating enforcement officer" means a member of the authorized volunteer enforcement force of the harbors division, department of transportation, who performs services in a voluntary and unpaid capacity under the authorized direction of an officer of the department; and "volunteer conservation and resources enforcement officer" means a member of the authorized volunteer enforcement force of the division of conservation and resources enforcement, department of land and natural resources, State of Hawaii, who performs services in a

voluntary and unpaid capacity under the authorized direction of an officer of the department].

“Volunteer boating enforcement officer” means a member of the authorized volunteer enforcement force of the harbors division, department of transportation, who performs services in a voluntary and unpaid capacity under the authorized direction of an officer of the department.

“Volunteer conservation and resources enforcement officer” means a member of the authorized volunteer enforcement force of the division of conservation and resources enforcement, department of land and natural resources, who performs services in a voluntary and unpaid capacity under the authorized direction of an officer of the department.

“Volunteer firefighter” means a person who performs services for a county fire department in a voluntary and unpaid capacity under the authorized direction of an officer of the department.

(b) [Benefits of injured board members, reserve police officers, volunteer firefighters, volunteer boating enforcement officers, and volunteer conservation and resources enforcement officers.] If a member of a public board, a reserve police officer, a police chaplain, a volunteer firefighter, a volunteer boating enforcement officer, or a volunteer conservation and resources enforcement officer is injured while performing services for the board, county police department, county fire department, harbors division of the department of transportation, or division of conservation and resources enforcement of the department of land and natural resources, under the conditions specified in section 386-3, the person or the person’s dependents shall be entitled to all compensation in the manner provided by this chapter and, for the purposes of this chapter, the person shall, in every case, be deemed to have earned wages for the services.

(c) [Computation of average weekly wages.] In computing the average weekly wages of an injured public board member, reserve police officer, police chaplain, volunteer firefighter, volunteer boating enforcement officer, or volunteer conservation and resources enforcement officer:

- (1) The person’s income from self-employment shall be considered wages;
- (2) The person shall, in no event, be considered to have earned less than the minimum hourly wage prescribed in chapter 387;
- (3) Wages of other employees in comparable employment shall not be considered;
- (4) Section 386-51(5) shall not apply; and
- (5) All provisions of section 386-51 not inconsistent [herewith] with this section shall apply.”

**SECTION 8. Rate reduction; insurers.** The insurance commissioner shall effect a moratorium and not approve any rate level increase in workers’ compensation insurance during the period July 1, 1996, to January 31, 1997.

- (1) Commencing February 1, 1997, all authorized insurers transacting workers’ compensation insurance in the voluntary market in this State shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers’ compensation coverage, in effect on January 31, 1997, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period February 1, 1997, to January 31, 1998. The cost savings identified shall have been applied equitably to all policyholders. There shall be no exception to the requirements of this paragraph, unless the commissioner, pursuant to an insurer’s petition, shall find that the use of the rates required herein by an insurer will be

- inadequate to the extent that the rates jeopardize the solvency of the insurer required to use such rates. If the Hawaii employers' mutual insurance company begins issuing policies during this time period, the company shall identify overall cost savings in its rate filings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply such cost savings to all workers' compensation policies issued and annually renewed through January 31, 1998.
- (2) Commencing February 1, 1998, all authorized insurers transacting workers' compensation insurance in the voluntary market in this State shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers' compensation coverage, in effect of January 31, 1998, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period February 1, 1998, to January 31, 1999. If the Hawaii employers' mutual insurance company is in existence or begins issuing policies during this time period, the company shall identify overall cost savings in its rate filings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply such cost savings to all workers' compensation policies issued and annually renewed through January 31, 1999.
  - (3) Commencing February 1, 1999, all authorized insurers transacting workers' compensation insurance in the voluntary market in this State shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers' compensation coverage, in effect on January 31, 1999, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period February 1, 1999, to January 31, 2000. If the Hawaii employers' mutual insurance company is in existence or begins issuing policies during this time period, the company shall identify overall cost savings in its rate filings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply such cost savings to all workers' compensation policies issued and annually renewed through January 31, 2000.
  - (4) As used in this section, "this Act" means House Bill No. 3968,<sup>1</sup> Regular Session of 1996, if enacted in any form.

**SECTION 9. Rate reduction; assigned risk pool.**

- (1) Commencing November 1, 1996, the workers compensation residual market established pursuant to section 431:14-116.6, Hawaii Revised Statutes, shall identify overall cost saving resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers' compensation coverage, in effect on October 31, 1996, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period from November 1, 1996, to October 31, 1997. The cost savings identified shall have been applied equitably to all policyholders.
- (2) Commencing November 1, 1997, the workers' compensation residual market established pursuant to section 431:14-116.6, Hawaii Revised Statutes, shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings as a rate reduction of the rates for all

- policies containing workers' compensation coverage, in effect on October 31, 1997, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period from November 1, 1997, to October 31, 1998.
- (3) Commencing November 1, 1998, the workers' compensation residual market established pursuant to section 431:14-116.6, Hawaii Revised Statutes, shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers' compensation coverage, in effect on October 31, 1998, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period from November 1, 1998, to October 31, 1999.
  - (4) As used in this section, "this Act" means House Bill No. 3968,<sup>1</sup> Regular Session of 1996, if enacted in any form.

**SECTION 10. Rate reduction; rating or advisory organization.**

- (1) Commencing November 1, 1996, any workers' compensation rating or advisory organization shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and shall apply such cost savings to a prospective loss cost which shall be in effect and filed during the period from November 1, 1996, to October 31, 1997. The cost savings identified shall have been applied equitably to all policyholders.
- (2) Commencing November 1, 1997, any workers' compensation rating or advisory organization shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings to a prospective loss cost which shall be in effect and filed during the period from November 1, 1997, to October 31, 1998.
- (3) Commencing November 1, 1998, any workers' compensation rating or advisory organization shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings to a prospective loss cost which shall be in effect and filed during the period from November 1, 1998, to October 31, 1999.
- (4) As used in this section, "this Act" means House Bill No. 3968,<sup>1</sup> Regular Session of 1996, if enacted in any form.

**SECTION 11. Relief.** (a) Except as otherwise provided in this Act, all rates or loss costs for workers' compensation insurance shall comply with the provisions contained in chapter 431, Hawaii Revised Statutes. Any insurer or rating organization that contends that the rate provided for in this Act is inadequate shall state in its filing the rate it contends is appropriate and shall state with specificity the factors or data that it contends should be considered to produce the appropriate rate. The insurer shall be permitted to use all of the generally accepted actuarial techniques in making any filing pursuant to this subsection. It shall be the insurer's or rating organization's burden to actuarially justify any rate increase from the reduced rates provided for in this Act. The insurer or rating organization shall include in the filing the expected impact of Act 234, Session Laws of Hawaii 1995, and this Act, where appropriate, on losses, expenses, and rates.

(b) In making this filing, as provided for by this subsection, the insurer or a rating organization shall comply with the following provisions:

- (1) Any rate filing contending that the rates established in this Act are inadequate shall be filed not later than sixty days prior to the appropriate filing date specified; and
- (2) The insurance commissioner shall review and approve or disapprove the rate filing not later than thirty days prior to the appropriate filing date specified with respect to filings submitted pursuant to this Act.

(c) A filing shall be deemed to meet the workers' compensation rate filing requirements unless disapproved by the insurance commissioner within the waiting period or any extension thereof. All filings submitted under this Act shall be deemed public records. All filings submitted under this Act shall be exempt from chapter 92-41, Hawaii Revised Statutes. The public hearing notice shall be filed with the office of the lieutenant governor at least six calendar days before the public hearing.

(d) If the filing is approved under this Act, a contested case hearing in accordance with chapter 91, Hawaii Revised Statutes, may be convened. Notwithstanding any law to the contrary, a petition and demand for hearing shall not stay the implementation of the rates approved by the commissioner or the rates currently in effect, whichever is higher. A final order of the commissioner may be appealed in accordance with chapter 91, Hawaii Revised Statutes.

(e) If a filing is disapproved, in whole or in part, a petition and demand for a contested case hearing may be filed in accordance with chapter 91, Hawaii Revised Statutes. The insurer or rating organization shall have the burden of proving that the disapproval is not justified. While the action of the commissioner in disapproving the rate filing is being challenged, the aggrieved insurer or rating organization shall be entitled to the rates currently established or the filed rates, whichever is lower.

(f) With respect to any approval or disapproval by the insurance commissioner regarding any rate filing focusing upon a reduction, the aggrieved insurer or rating organization shall be entitled to charge the current filed rates while the action of the insurance commissioner is being challenged and contested.

(g) Upon final disposition, pursuant to chapter 91, Hawaii Revised Statutes, or by a court of competent jurisdiction of the insurance commissioner's approval or disapproval of the rates, the insurance commissioner shall immediately determine and order that the insurer or rating organization make the appropriate rebates of premiums to policyholders or allow the insurer or rating organization to exact a surcharge on premiums.

SECTION 12. There is appropriated out of the special compensation fund the sum of \$150,000 or so much thereof as may be necessary for fiscal year 1996-1997 to establish the workers' compensation benefits facilitator unit.

The sum appropriated shall be expended by the department of budget and finance for the purposes of this Act.

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 14. This Act shall take effect upon its approval; except that section 12 shall take effect on July 1, 1996.

(Approved June 19, 1996.)<sup>3</sup>

#### Notes

1. Act 261.

2. Edited pursuant to HRS §23G-16.5.

3. This Act was approved on June 19, 1996, which is after the approval date (June 18, 1996) of Acts 266 through 286 and Act 288.



## ACT 261

H.B. NO. 3968

A Bill for an Act Relating to Workers' Compensation Insurance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that an adequate and available workers' compensation insurance market is necessary for the economic welfare of the State, and that without workers' compensation insurance, the orderly growth and economic development of the State would be impeded. Adequate insurance for worker's compensation is necessary to enable employers to satisfy their legal obligation under chapter 386, Hawaii Revised Statutes.

The workers' compensation assigned risk pool was established to provide coverage for employers whose job classifications have a high risk of employee injury or illness. However, many Hawaii businesses have been placed in the assigned risk pool merely because they are small businesses, not because they are high risks. The assigned risk pool is a growing market that has increased steadily for the last ten years and presently is the largest market share of workers' compensation insurance. For policy year 1994, approximately thirty per cent of Hawaii's businesses were in the assigned risk pool.

At least four states have established employers' mutual insurance companies in response to workers' compensation problems in their states. The policyholders of these companies are actively involved in the running of the companies. These entities write a significant market share in their respective states and provide a full range of workers' compensation services.

The purpose of this Act is to replace the existing workers' compensation assigned risk pool with a statutorily established nonprofit corporation to be known as the Hawaii employers' mutual insurance company (HEMIC) to provide workers' compensation coverage for Hawaii employers, including employers who have in good faith, but without success, sought workers' compensation insurance in the voluntary market. Initially, no employer shall be refused coverage.

HEMIC will operate as a domestic mutual insurance company and will not be a state agency. It will be owned and governed by its policyholders, Hawaii employers. HEMIC will not receive any state appropriation. HEMIC or its liabilities shall not be deemed to constitute a debt or liability of the State of Hawaii or a pledge of full faith and credit of the State.

Property destruction by Hurricane Iniki in 1992 caused an insurance crisis in the State. To ease the crisis, the legislature created the Hawaii hurricane relief fund in 1993, which required state bonds and general fund appropriations. In contrast, it is the legislature's intent to provide relief in the workers' compensation system by establishing HEMIC before an insurance "crisis" is reached and without the financial involvement of the State.

Because HEMIC will be the company of last resort and basically must take all comers, the legislature is concerned with its long-term success. Concerns about HEMIC's initial financing and operating funds have been expressed by those who want to make sure that the legislature will not have to step in and statutorily "bail out" HEMIC later on. One way to keep this from happening is to put HEMIC on as strong a financial footing as possible by not limiting the board's ability to make prudent business decisions in this regard. Therefore, HEMIC should be authorized to exercise a full range of financing options to ensure its viability just as would any private sector business.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

**“ARTICLE  
HAWAII EMPLOYERS’ MUTUAL INSURANCE COMPANY**

**§431: -101 Purpose.** The Hawaii employers’ mutual insurance company is established to provide workers’ compensation coverage to employers of the State at the highest level of service with the lowest possible cost, consistent with reasonable and applicable actuarial standards and the sound financial integrity of the company. The purposes of the company are to provide the highest standard of workplace safety and loss prevention, to encourage employer involvement, and to be responsive to each policyholder’s experience, practice, and operating effectiveness.

**§431: -102 Definitions.** As used in this article:

“Administrator” means the president and chief executive officer of the Hawaii employers’ mutual insurance company.

“Board” means the board of directors of the Hawaii employers’ mutual insurance company.

“Company” means the Hawaii employers’ mutual insurance company established by this article.

“Investment manager” means any fiduciary, who has been designated by the board to manage, acquire, or dispose of the company’s assets, a bank as defined by law, or an insurance company qualified to perform services under the laws of more than one state.

“Qualified actuary” means a member of the American Academy of Actuaries who is either a fellow of the Casualty Actuarial Society or an Associate of the Casualty Actuarial Society who has five or more years of experience.

**§431: -103 Hawaii employers’ mutual insurance company, established.** (a) The Hawaii employers’ mutual insurance company is established as a nonprofit, independent corporation to provide workers’ compensation insurance and related services to Hawaii employers.

(b) The company shall be organized and operated as a domestic mutual insurance company. The company shall comply with, unless specifically excluded, all requirements of the insurance code regarding a domestic mutual insurance company. The company shall not be an agency of the State. The company or its liabilities shall not be deemed to constitute debts or liabilities of the State of Hawaii or pledges of the full faith and credit of the State. The company shall write workers’ compensation insurance policies covering Hawaii employers as required or authorized by law and employers’ liability to the same extent as any other private insurer. The company shall not write other lines of insurance, reinsurance, or excess insurance.

(c) The company may insure Hawaii employers against their liability for compensation or damages for injury or death under the United States Longshoremen’s and Harbor Workers’ Compensation Act or federal or maritime laws like any other private insurer.

(d) The company’s assets shall consist of real and personal property and shall include all premiums and other moneys paid to the company, all property, and other income acquired, earned, or otherwise gained by the use of premiums and other moneys paid to the company by deposits, investments, exchanges, and other transactions. The company’s assets shall be the sole property of the company and shall be used exclusively by the company for the operation and obligations of the company.

(e) Notwithstanding any other law to the contrary, the company shall be excluded from the surplus requirements of domestic mutual insurers from January 1, 1997, through December 31, 2007.

(f) The company is exempt from participation, and shall not join, contribute financially to, nor be entitled to the protection of, any plan, association, guaranty, or insolvency fund authorized or required by this chapter.

(g) On or after January 1, 1997, the company shall provide workers' compensation coverage to Hawaii employers otherwise entitled to coverage but not able to or not electing to purchase coverage in the voluntary insurance market, and are not authorized, either individually or as a part of a group, to self-insure. An authorized self-insured is eligible for coverage upon termination of self-insurance.

**§431: -104 Company divisions.** (a) For purposes of providing representation on the board, the company shall consist of industry divisions and a high-risk division. Assignments to each division shall be made by the administrator with the approval of the board. The initial company divisions shall include:

- (1) Manufacturing and producers;
- (2) Services, entertainment, and amusement;
- (3) Professions;
- (4) Construction;
- (5) Wholesale and retail sales;
- (6) Transportation and public utilities;
- (7) Finance, insurance, and real estate; and
- (8) High risk.

(b) An employer with two or more lost-time claims greater than \$10,000, and a loss ratio greater than 1.0, over the immediately preceding three years shall be placed in the high-risk division.

(c) The administrator, with the approval of the board, shall modify the requirements for placing employers in the high risk division if the qualifications result in the high risk division being limited to only those employers with measurable adverse loss ratios, demonstrated accident frequency records, or a demonstrated attitude of noncompliance with workplace safety and health programs or claims management requirements.

(d) The company shall give notice to each employer in the high risk division not less than thirty days prior to the policy renewal date requesting a report on the employer's lost-time claims for the policy year. The report shall be used to determine the employer's qualification for placement in the high risk division.

(e) The company may apply a rating differential and charge a surcharge to any employer placed in the high risk division.

**§431: -105 Board of directors, established.** (a) The board of directors of the company shall be responsible for the organization, management, policies, and activities of the company. The board shall consist of nine voting members and one nonvoting member. The voting members shall consist of the following:

- (1) Eight directors who shall be owners, officers, or employees of policyholders of the company and shall represent each of the company divisions; and
- (2) One director who shall be a public, at-large member elected by the board of directors;

The administrator shall be the nonvoting member of the board.

(b) The initial eight division directors shall be appointed by the governor within sixty days of the effective date of this section and shall serve for terms of one year each. The governor shall ensure adequate representation from the major sectors of the economy and workforce in the State.

The public, at-large member initially elected by the board shall serve for a term of one year.

The initial board of directors shall determine the staggering and length of future directors' terms; provided that no term shall exceed three years. Upon the expiration of the terms of the initial division directors, the company's policyholders in the division represented by the director shall elect the directors. Each director shall serve for terms as specified by the board unless sooner removed for cause pursuant to rules adopted by the board. Each director shall hold office until a successor is elected as provided in this section. No person shall serve more than two full terms as director. Any other law to the contrary notwithstanding, the election and composition of the board of directors as provided in this section shall be deemed adequate to qualify the company as a mutual insurer under chapter 431.

(c) A vacancy on the board shall be filled by appointment of the governor or insurance commissioner in the case of appointed directors, or by election by the company division's policyholders or the board of directors in the case of positions formerly occupied by a director elected by the company division's policyholders or by the board of directors, respectively. The person appointed to fill a vacancy shall serve for the remainder of the term of the person's predecessor.

(d) Within one year after appointment, each director shall be a member or an employee of a policyholder of the company and shall continue in such status during the director's term of office. Any director representing a member that fails to maintain workers' compensation insurance from the company shall be disqualified from serving on the board.

(e) Each director shall receive necessary traveling and board expenses incurred in the performance of duty as director and a fee commensurate with the duties expected of actual attendance at board meetings.

(f) No person who has any interest as a stockholder, employee, attorney, or contractor of a competing insurer shall be a director.

**§431: -106 Powers; generally.** Except as otherwise limited by this chapter, the company may:

- (1) Sue, be sued, complain, and defend, in its corporate name;
- (2) Have a corporate seal, which may be altered at pleasure, and use the seal by causing it, or a facsimile thereof, to be impressed, affixed, or in any other manner reproduced;
- (3) Purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest therein, wherever situated;
- (4) Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all and any part of its property and assets;
- (5) Make contracts and incur liabilities, borrow money at such rates of interest as the board may determine, issue guaranty capital shares and surplus notes, require capital contributions, issue its notes, debenture bonds, and other obligations, secure any of its obligations by mortgage or pledge of all or any portion of its property or income, and secure financing by any board approved mechanism;
- (6) Allocate fiduciary responsibilities among the directors and designate other persons to carry out fiduciary responsibilities;
- (7) Collect, receive, hold, and disburse all money payable to or by the company;
- (8) Deposit the company's money in banks or depositories selected by the board and withdraw the company's money from such banks or depositories; provided that the withdrawal shall be made or authorized only upon the signatures of at least two persons approved by the board;

- (9) Pay money from the company to effectuate the company's purpose and administration, including amounts for costs incurred to establish the company; and
- (10) Exercise all powers necessary or convenient to effect the purposes of the company.

**§431: -107 Duties and responsibilities.** (a) All corporate powers shall be exercised by or under the authority of the board, unless otherwise provided in this chapter or in the articles of incorporation.

- (b) The board shall discharge its duties:
  - (1) In accordance with the company's purpose;
  - (2) With the care, skill, prudence, and diligence under the circumstances that a prudent director, acting in a like capacity and familiar with such matters would use in conducting a similar enterprise and purpose;
  - (3) By diversifying the company's investments to minimize the risk of losses, unless it is prudent not to do so;
  - (4) In accordance with governing legal documents;
  - (5) By having an annual audit of the company by an independent certified public accountant;
  - (6) By securing a fidelity bond for the administrator and in its discretion for other agents dealing with the company's assets at the company's expense;
  - (7) By purchasing liability insurance for errors and omissions for the board, each director, and any other fiduciary employed or contracted by the company to cover liability or losses caused by the act or omission of a fiduciary;
  - (8) By maintaining proper books of accounts and records of the company's administration;
  - (9) By carrying out the reporting and disclosure requirements required by law; and
  - (10) By appointing a qualified actuary to develop and recommend a responsible schedule of premium rates with consideration of the company's investment income or refunds, or both, and to provide actuarial certification of the company's loss reserves.
- (c) Except as otherwise provided by law, the board may:
  - (1) Transact workers' compensation insurance policies required or authorized by state law to the same extent as any other insurer;
  - (2) Provide the terms and conditions of an insurance policy;
  - (3) Provide that any written instrument be executed for the company by the administrator or the administrator's agent;
  - (4) Enter into agreements to reinsure all or part of the company's exposure to loss and to limit the risk to the company; and
  - (5) Employ persons to administer the company, including legal counsel, accountants, insurance consultants, administrators, qualified actuaries, investment managers, adjustors, other experts, and clerical employees and pay compensation and expenses in connection therewith.

**§431: -108 Administrator; appointment; duties.** (a) The board shall hire an administrator, who shall serve at the pleasure of the board. The administrator shall be the president of the company and the chief executive officer, who shall be responsible for the day-to-day operations and management of the company.

(b) The administrator shall have a proven successful experience as an executive at the general management level in the insurance business. The administrator shall manage and conduct the business of the company according to the

board's direction and policies. The administrator shall receive compensation authorized by the board.

(c) Before entering the duties of office, the administrator shall give a fidelity bond in an amount and with sureties approved by the board. The premium for the bond shall be paid by the company.

(d) The administrator shall be an ex officio, nonvoting member of the board.

**§431: -109 Financial management.** (a) The board shall select a custodial trustee to collect, receive, hold, or disburse moneys payable to or by the company.

(b) The board shall invest the company's principal and income without distinction between principal and income and keep the company's assets invested in real or personal property or other securities. The board may retain cash temporarily awaiting investment or to meet contemplated payments without liability for interest thereon.

(c) The board shall manage the company's assets, except to the extent that the authority to manage the company's assets is delegated to other qualified investment managers. The board may appoint investment managers to manage, acquire, or dispose of any of the company's assets. An investment manager may be designated as an "investment agent". The investment manager shall acknowledge in writing that he or she is a fiduciary under the company.

(d) The board may:

- (1) Sell the company's securities. No purchaser of the company's securities is bound to see to the application of the purchase money or inquire as to the validity of such sale;
- (2) Vote on behalf of any stocks, bonds, or securities of any corporation or issuer held in the company or request any action to such corporation or issuer. The board may give general or special proxies or powers of attorney with or without powers of substitution;
- (3) Participate in reorganizations, recapitalization, consolidations, mergers, and similar transactions for stocks, bonds, or other securities of any corporation that are held by the company, and accept and retain any property received thereunder for the company;
- (4) Exercise any subscription rights and conversion privileges for the company's stocks or securities;
- (5) Compromise, compound, and settle any debt or obligation due to or from the company; reduce the amount of principal and interest, damages, and costs of collection in settling such debts;
- (6) Cause securities held by it to be registered in its own name or in the name of a nominee without indicating that the securities are held in a fiduciary capacity and to hold any securities in bearer form. The company's records, however, shall show that such investments are part of the company;
- (7) Delegate its investment powers to investment managers of the company to expedite the purchase and sale of securities. The purchase or sale of securities by these managers shall be in the name selected by the board. The authority of these managers to purchase or sell securities for the company shall be evidenced by written authority executed by the administrator. The board shall require these managers to keep it currently informed as to the nature and amount of the investments made for the company by them. The board may enter into appropriate agreements with these managers setting forth their investment powers and limitations. The board may terminate the services of these managers. These managers shall be subject to the board's instructions;
- (8) Pay taxes or assessments that are assessed against the company;

- (9) Require any applicant or policyholder to furnish the board with such information necessary for the company's administration; and
- (10) Delegate its authority to the administrator or any authorized representative to maintain any legal proceedings necessary to protect the company or the directors or to secure payment due to the company. In connection with this delegation, the board or the administrator or their representative may compromise, settle, or release claims on behalf of or against the company or the board.

**§431: -110 Premium rates, determination.** (a) The board shall establish the premium rates to be charged for insurance sold by the company. The company shall comply with the requirements set forth in article 14 of this chapter. Premium rates shall be set at levels sufficient, when invested, to carry all claims to maturity, to meet the reasonable expenses for administering the company, and to maintain a reasonable surplus.

(b) The board shall hire a qualified actuary to assist with the development of sound premium rates.

**§431: -111 Reserves, investment.** The board may invest or reinvest any surplus or reserves within the limitations established for insurance companies under chapter 431.

**§431: -112 Financial statements and other reports.** (a) The company shall submit to the commissioner an annual statement of financial condition audited by an independent certified accountant. The audit report shall contain an actuarial opinion prepared by a qualified actuary on the company's claims reserves and expenses. The financial statement shall be on a form prescribed by the commissioner and shall include actuarially appropriate reserves for:

- (1) Known claims and associated expenses;
- (2) Claims incurred but not reported and associated expenses;
- (3) Unearned premiums; and
- (4) Bad debts, reserves for which shall be shown as liabilities.

(b) The company shall compile and maintain statistical and actuarial data relating to the determination of premium rate levels, the incidence of work-related injuries, the cost of injuries, and other data relating to work injuries. The compiled information shall be submitted annually to the commissioner and to the director of labor and industrial relations.

**§431: -113 Annual accounting; dividends.** (a) The company shall conduct an annual accounting of its incurred loss experience and expenses.

(b) The board may declare and apportion reasonable dividends to policyholders, determined by an actuarial opinion prepared by a qualified actuary after evaluating the impact of the dividends on the solvency of the company. The dividends may be paid or credited to policyholders according to classifications of policies established by the board.

(c) No dividends shall be:

- (1) Paid or credited in a manner that unfairly discriminates between policies within the same classification;
- (2) Made contingent upon payment of any renewal premium on any policy;  
or
- (3) Paid or credited in the first three years of operation of the company.

**§431: -114 Audits.** The administrator, or designated representative, shall have reasonable access to any policyholder's payroll and employment records

during regular working hours to carry out audits of payroll reported, the number of employees on the payroll, and other information necessary for the administration of this article.

**§431: -115 Denial, cancellation, and termination.** The company may deny coverage or renewal of an existing policy or may terminate an existing policy of a policyholder or applicant for:

- (1) Nonpayment of an undisputed premium;
- (2) Refusal to permit on-site workplace safety examinations;
- (3) Failure to comply with workplace safety and health programs required by the company; or
- (4) Failure to accurately disclose information concerning the applicant's or policyholder's ownership, change of ownership, operations, or payroll, including the allocation of payroll among state and federal compensation programs, and other information necessary for the board to determine premium rates.

**§431: -116 Wilful misrepresentation and fraud.** (a) Any person who wilfully makes a false statement or representation for the purpose of directly obtaining any compensation or payment or for the purpose of avoiding any compensation or payment under this article shall be subject to the penalties in section 386-98.

(b) The company shall develop and implement a program to identify and investigate fraudulent insurance acts.

**§431: -117 Workplace safety and health programs.** (a) The company shall work with policyholders, health care providers, and employees to develop, implement, and monitor workplace safety and health and return to work programs. The programs shall include the development of a workplace accident and injury reduction plan that promotes safe working conditions.

(b) The company shall promote safety programs to policyholders by:

- (1) Analyzing reports of industrial accidents of members to help determine the cause of those accidents;
- (2) Conducting studies for risk and hazard identification and assessments by safety and medical professionals;
- (3) Conducting educational programs designed to prevent frequently recurring industrial accidents; and
- (4) Inspecting work sites and investigating unsafe working conditions to promote job safety and eliminate hazards.

(c) Company representatives shall have reasonable access to the premises of any policyholder or applicant during regular working hours to carry out workplace evaluations.

(d) Upon the completion of a detailed inspection and recognition of a high regard for employee work safety, a deviation may be applied to the rate structure of that insured noting special recognition of those efforts.

**§431: -118 Discontinuation of residual market plan.** (a) The residual market plan, as authorized by section 431:14-116.6, is discontinued effective December 31, 1996, or the date the company writes its first policy, whichever date is later, except for dissolution of any obligations for claims arising out of any policies written pursuant to the plan with inception dates of or before December 31, 1996, or the date the company writes its first policy, whichever date is later. It is the intent of this section to provide for an orderly transfer of policies from the residual market plan as authorized by section 431:14-116.6 to the company.



(b) The residual market plan shall continue its operation for all policies with inception dates of or before December 31, 1996, or the date the company writes its first policy, whichever date is later. All policies written thereunder shall be for one-year terms, and shall not be terminated prior to expiration except for cause. In no case shall policies with inception dates of January 1, 1997, or the date the company writes its first policy, whichever date is later, be provided under the residual market plan authorized by section 431:14-116.6.

**§431: -119 Discontinuation of assigned risks.** (a) Assigned risk coverage, as authorized by section 431:14-116, is discontinued effective December 31, 1996, or the date the company writes its first policy, whichever date is later, except for dissolution of any obligations for claims arising out of any policies written pursuant to section 431:14-116 with inception dates on or before December 31, 1996, or the date the company writes its first policy, whichever date is later. It is the intent of this section to provide for an orderly transfer of assigned risks as authorized by section 431:14-116 to the company.

(b) Assigned risk coverage, as authorized under section 431:14-116 shall continue operation for all policies with inception dates of or before December 31, 1996, or the date the company writes its first policy, whichever date is later. All policies written thereunder shall be for one-year terms, and shall not be terminated prior to expiration except for cause. In no case shall policies with inception dates of January 1, 1997, or the date the company writes its first policy, whichever date is later, be provided for assigned risks authorized by section 431:14-116."

SECTION 3. Section 431:14-116, Hawaii Revised Statutes, is amended to read as follows:

**"§431:14-116 Assigned risks.** Agreements may be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to, but who are unable to procure, such insurance through ordinary methods and the insurers may agree among themselves on the use of reasonable rate modifications for such insurance, the agreements and rate modifications to be subject to the approval of the commissioner[.]; provided that this section shall not apply to workers' compensation insurance after December 31, 1996, or the date the domestic mutual insurance company established pursuant to 431: writes its first policy, whichever is later."

SECTION 4. The Hawaii employers' mutual insurance company may issue debentures one time in an amount not exceeding \$10,000,000, payable solely from premiums received from insurance policies and other revenues received by the company for the initial operating expenses of the company. The debentures shall be issued in the name of the company and not in the name of the State. The final maturity date of the debentures shall not exceed ten years from the date of issuance. The board shall set aside and pledge revenues from premiums and other sources for the payment of the principal and interest on the bonds debentures.

SECTION 5. Rate reduction; insurers. The insurance commissioner shall effect a moratorium and not approve any rate level increase in workers' compensation insurance during the period July 1, 1996, to January 31, 1997.

- (1) Commencing February 1, 1997, all authorized insurers transacting workers' compensation insurance in the voluntary market in this State shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers'

compensation coverage, in effect on January 31, 1997, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period February 1, 1997, to January 31, 1998. The cost savings identified shall have been applied equitably to all policyholders. There shall be no exception to the requirements of this paragraph, unless the commissioner, pursuant to an insurer's petition, shall find that the use of the rates required herein by an insurer will be inadequate to the extent that the rates jeopardize the solvency of the insurer required to use such rates. If the Hawaii employers' mutual insurance company begins issuing policies during this time period, the company shall identify overall cost savings in its rate filings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply such cost savings to all workers' compensation policies issued and annually renewed through January 31, 1998.

- (2) Commencing February 1, 1998, all authorized insurers transacting workers' compensation insurance in the voluntary market in this State shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers' compensation coverage, in effect on January 31, 1998, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period February 1, 1998, to January 31, 1999. If the Hawaii employers' mutual insurance company is in existence or begins issuing policies during this time period, the company shall identify overall cost savings in its rate filings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply such cost savings to all workers' compensation policies issued and annually renewed through January 31, 1999.
- (3) Commencing February 1, 1999, all authorized insurers transacting workers' compensation insurance in the voluntary market in this State shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers' compensation coverage, in effect on January 31, 1999, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period February 1, 1999, to January 31, 2000. If the Hawaii employers' mutual insurance company is in existence or begins issuing policies during this time period, the company shall identify overall cost savings in its rate filings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings to all workers' compensation policies issued and annually renewed through January 31, 2000.

#### SECTION 6. Rate reduction; assigned risk pool.

- (1) Commencing November 1, 1996, the workers' compensation residual market established pursuant to section 431:14-116.6, Hawaii Revised Statutes, shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers' compensation coverage, in effect on October 31, 1996, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period from November 1, 1996, to October 31, 1997. The cost savings identified shall have been applied equitably to all policyholders.

- (2) Commencing November 1, 1997, the workers' compensation residual market established pursuant to section 431:14-116.6, Hawaii Revised Statutes, shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers' compensation coverage, in effect on October 31, 1997, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period from November 1, 1997, to October 31, 1998.
- (3) Commencing November 1, 1998, the workers' compensation residual market established pursuant to section 431:14-116.6, Hawaii Revised Statutes, shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings as a rate reduction of the rates for all policies containing workers' compensation coverage, in effect on October 31, 1998, for each new and renewal policy and provide that the new rates shall be in effect and filed during the period from November 1, 1998, to October 31, 1999.

**SECTION 7. Rate reduction; rating or advisory organization.**

- (1) Commencing November 1, 1996, any workers' compensation rating or advisory organization shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and shall apply the cost savings to a prospective loss cost which shall be in effect and filed during the period from November 1, 1996, to October 31, 1997. The cost savings identified shall have been applied equitably to all policyholders.
- (2) Commencing November 1, 1997, any workers' compensation rating or advisory organization shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings to a prospective loss cost which shall be in effect and filed during the period from November 1, 1997, to October 31, 1998.
- (3) Commencing November 1, 1998, any workers' compensation rating or advisory organization shall identify overall cost savings resulting from the implementation of Act 234, Session Laws of Hawaii 1995, and this Act, and shall apply the cost savings to a prospective loss cost which shall be in effect and filed during the period from November 1, 1998, to October 31, 1999.

**SECTION 8. Relief.** (a) Except as otherwise provided in this Act, all rates or loss costs for workers' compensation insurance shall comply with the provisions contained in chapter 431, Hawaii Revised Statutes. Any insurer or rating organization which contends that the rate provided for in this Act is inadequate shall state in its filing the rate it contends is appropriate and shall state with specificity the factors or data which it contends should be considered in order to produce such appropriate rate. The insurer shall be permitted to use all of the generally accepted actuarial techniques in making any filing pursuant to this subsection. It shall be the insurer's or rating organization's burden to actuarially justify any rate increase from the reduced rates provided for in this Act. The insurer or rating organization shall include in the filing the expected impact of Act 234, Session Laws of Hawaii 1995, and this Act, where appropriate, on losses, expenses and rates.

(b) In making this filing as provided for by this subsection, the workers' compensation residual market established pursuant to section 431:14-116.6, Hawaii

Revised Statutes, or a rating organization, or the Hawaii employers' mutual insurance company, shall comply with the following provisions:

- (1) Any rate filing contending that the rates established in this Act are inadequate shall be filed not later than sixty days prior to the appropriate filing date specified.
- (2) The insurance commissioner shall review and approve or disapprove the rate filing not later than thirty days prior to the appropriate filing date specified with respect to filings submitted pursuant to this Act.
- (c) A filing shall be deemed to meet the workers' compensation rate filing requirements unless disapproved by the commissioner within the waiting period or any extension thereof. All filings submitted under this Act shall be deemed public records. All filings submitted under this Act shall be exempt from chapter 92-41, Hawaii Revised Statutes. The public hearing notice shall be filed with the office of the lieutenant governor at least six calendar days before the public hearing.
- (d) If the filing is approved under this Act, a contested case hearing in accordance with chapter 91, Hawaii Revised Statutes, may be convened. Notwithstanding any law to the contrary, a petition and demand for hearing shall not stay the implementation of the rates approved by the commissioner or the rates currently in effect, whichever is higher. A final order of the commissioner may be appealed in accordance with chapter 91, Hawaii Revised Statutes.
- (e) If a filing is disapproved in whole or in part, a petition and demand for a contested case hearing may be filed in accordance with chapter 91, Hawaii Revised Statutes. The insurer or rating organization shall have the burden of proving that the disapproval is not justified. While the action of the commissioner in disapproving the rate filing is being challenged, the aggrieved insurer or assigned risk pool shall be entitled to the rates currently established or the filed rates, whichever is lower.
- (f) With respect to any approval or disapproval by the commissioner regarding any rate filing focusing upon a reduction, the aggrieved insurer or assigned risk pool shall be entitled to charge the current filed rates while the action of the commissioner is being challenged and contested.
- (g) Upon final disposition, pursuant to chapter 91, Hawaii Revised Statutes, or by a court of competent jurisdiction of the insurance commissioner's approval or disapproval of the rates, the insurance commissioner shall immediately determine and order that the insurer or assigned risk pool make the appropriate rebates of premiums to policyholders or allow the insurer or assigned risk pool to exact a surcharge on premiums.

SECTION 9. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 10. In the event that the Hawaii employers' mutual insurance company's certificate of authority is revoked by the insurance commissioner, section 431: -118 and section 431: -119 of this Act, and the amendments made pursuant to this Act to section 431:14-116, Hawaii Revised Statutes, shall be repealed, and upon such repeal section 431:14-116, Hawaii Revised Statutes, shall be reenacted in the form in which it existed prior to the effective date of this Act.

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 12. This Act shall take effect upon its approval.

(Approved June 19, 1996.)<sup>1</sup>

Note

1. This Act was approved on June 19, 1996, which is after the approval date (June 18, 1996) of Acts 266 through 286 and Act 288.

ACT 262

S.B. NO. 2522

A Bill for an Act Relating to Community Hospitals.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature recognizes that the State's community hospitals system is the fifth largest public hospital system in the nation. Due to rapid changes taking place in the health care industry and the impending implementation of national and local health care reform, the legislature acknowledges that the administrative structure of governance must be provided with the appropriate flexibility and autonomy needed for community hospitals to compete and remain viable.

The current administrative arrangement places the State's community hospitals system in a division within the department of health. However, a health care system of such pivotal importance to the quality of people's lives requires significantly greater operational autonomy.

Act 266, Session Laws of Hawaii 1994, mandated the creation of a task force to evaluate the implications of the community hospitals' current operational structure and to make recommendations regarding the transition of the division of community hospitals into an independent agency. In early 1995, the governor's task force on the establishment of an agency for community hospitals issued its report to the governor and the legislature.

The legislature has reviewed those recommendations and conducted its own inquiry into the status of the community hospitals. Based on this process, the legislature has determined that it is in the best interests of the residents of Hawaii that all operations of the division of community hospitals be transferred to the Hawaii health systems corporation, an independent agency of the State.

The purpose of this Act is to affirm the State's commitment to provide quality health care for the people of our State, by creating the Hawaii health systems corporation.

The purpose and overriding goal of this bill is to provide better health care for all the people in the State of Hawaii, including those served by small rural facilities, by freeing the facilities from unwarranted bureaucratic oversight. If there is a conflict between appropriate health care and "bottomline" decisions, quality health care should be given precedence to the extent reasonably possible.

Nothing in this Act other than the provisions for legislative oversight over the budget and activities of the corporation shall be construed as a restriction or limitation upon any other powers that the Hawaii health systems corporation might otherwise have under any other law of this State. This Act is cumulative to any such powers. This Act shall be construed to provide a complete, additional, and alternative method for doing the things authorized in other laws and shall be regarded as supplemental and additional to powers conferred by other laws. It is also the intent of the legislature that all of the activities and services of the division of community hospitals be continued without interruption by the corporation during the implementation of this Act.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

# “CHAPTER HAWAII HEALTH SYSTEMS CORPORATION

## PART I. GENERAL PROVISIONS

§ -1 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Corporation” means the body corporate and politic known as the Hawaii health systems corporation.

“Corporation board” means the board of directors of the corporation.

“Consumer” means any individual who may utilize a Hawaii health systems facility for health services and is not a provider.

“Department” means the department of health.

“Director” means the director of health.

“Division” means the programs, services, and facilities operated by the department of health, division of community hospitals, prior to the transfer date.

“Health facility” means any one of the facilities that constitute the division of community hospitals.

“Health systems assets” means all property or rights in property, real, personal and mixed, tangible or intangible, existing on the transfer date, used by or accruing to the division in the normal course of its operations.

“Provider” means any supplier of medical or health care goods and services of the type provided at a Hawaii health systems facility.

“Transfer date” means a date agreed to by the department and the corporation for the transfer of health systems assets to and the assumption of health systems liabilities, which includes without limitation, all debts or other obligations, contingent or certain, owing on such date, by the corporation.

§ -2 **Hawaii health systems corporation.** (a) There is established the Hawaii health systems corporation, which shall be a public body corporate and politic and an instrumentality and agency of the State. The corporation shall be placed within the department of health for the administrative purposes specified in section 26-35(6) only.

(b) The corporate organization shall be divided into five regions, as follows:

- (1) The city and county of Honolulu;
- (2) The county of Kauai;
- (3) The county of Maui, except the county of Kalawao;
- (4) The eastern section of the county of Hawaii, comprising the Puna district, north Hilo district, south Hilo district, Hamakua district, and Kau district; and
- (5) The western section of the county of Hawaii, comprising the north Kohala district, south Kohala district, north Kona district, and south Kona district;

and shall be identified as regions I, II, III, IV, and V, respectively.

§ -3 **Corporation board.** (a) The corporation shall be governed by a eleven-member board of directors which shall carry out the duties and responsibilities of the corporation.

(b) Ten members of the corporation board shall be appointed by the governor as follows:

- (1) One member from region I who resides in the city and county of Oahu;
- (2) One member from region II who resides in the county of Kauai;
- (3) One member from region III who resides in the county of Maui;

- (4) One member from region IV who resides in the eastern section of the county of Hawaii;
- (5) One member from region V who resides in the western section of the county of Hawaii; and
- (6) Five at-large members who reside in the State of Hawaii.

The eleventh member shall be the Director of Health or the director's designee, who shall serve as an ex officio, voting member.

Appointments to the corporation board shall be made by the governor, subject to confirmation by the senate pursuant to section 26-34. Prior to the transfer date, the public health facility management advisory committees appointed pursuant to section 323-66 for each county may recommend names to the governor for each position on the corporation board designated for a region which corresponds to its county. After the transfer date, the public health facility management advisory committees appointed pursuant to section 323-10 for each region may make such recommendations to the governor. The ten appointed board members shall serve for a term of four years; provided that upon the initial appointment of the members:

- (1) Two at-large members shall be appointed for a term of two years;
- (2) Three at-large members shall be appointed for a term of three years; and
- (3) Five regional members shall be appointed for a term of four years.

Any vacancy shall be filled in the same manner provided for the original appointments. The corporation board shall elect its own chair from among its members.

(c) The selection, appointment, and confirmation of any nominee shall be based on ensuring that board members have diverse and beneficial perspectives and experiences and that they include, to the extent possible, representatives of the medical, business, management, law, finance, and health sectors, and patients or consumers. Members of the board shall serve without compensation but may be reimbursed for actual expenses, including travel expenses incurred in the performance of their duties.

(d) Any member of the board may be removed for cause by the governor or for cause by vote of a two-thirds majority of the board's members then in office. For purposes of this section, cause shall include without limitation:

- (1) Malfeasance in office;
- (2) Failure to attend regularly called meetings;
- (3) Sentencing for conviction of a felony, to the extent allowed by section 831-2; or
- (4) Any other cause that may render a member incapable or unfit to discharge the duties required under this chapter.

Filing nomination papers for elective office or appointment to elective office, or conviction of a felony consistent with section 831-3.1, shall automatically and immediately disqualify a board member from office.

**§ -4 Board meetings.** (a) The corporation board shall meet no fewer than four times a year. All meetings of the corporation board shall be subject to chapter 92, except that in addition to matters exempted pursuant to law, the corporation board may elect to hold an executive meeting for the consideration of any matters set forth in section 92-6.

(b) All business of the corporation board shall be conducted at a regular or special meeting at which a quorum is present, consisting of at least a majority of the directors then in office. Any action of the corporation board shall require the affirmative vote of a majority of those present and voting at the meeting; except that a vote of two-thirds of the members of the corporation board then in office shall be required for any of the following actions:

- (1) Removal by the corporation board of one of its members;

- (2) Amendment by the corporation board of its bylaws;
- (3) Hiring or removing the chief executive officer of the corporation; and
- (4) Any other actions as provided by the corporation bylaws.

§ -5 **Disclosure of interests.** All corporation board members and employees of the corporation shall be subject to chapter 84.

§ -6 **Records.** The corporation shall be subject to the requirements of chapter 92F, except that the following categories of government records shall not be required to be disclosed:

- (1) Applications for credentials or staff privileges at any of the corporation's medical facilities, records from peer review proceedings, and medical records; and
- (2) Marketing strategies, strategic plans, evaluations, assessments, negotiations, or rates and charges, the disclosure of which would raise the cost of procurement or give a manifestly unfair advantage to any competitor or to any person or entity seeking to do business or proposing to enter into an agreement with the corporation or any of its facilities.

Any person denied access to any such government records shall have available the remedies specified in sections 92F-15 and 92F-15.5. Government records protected from disclosure by this section shall be subject to the interagency disclosure provisions of section 92F-19. Section 624-25.5 shall apply to this part notwithstanding anything to the contrary contained in this section.

§ -7 **Duties and powers of the corporation.** (a) Notwithstanding any other law to the contrary, the corporation shall have and exercise the following duties and powers:

- (1) Developing its own policies, procedures, and rules necessary or appropriate to plan, operate, manage, and control the system of public health facilities and services without regard to chapter 91;
- (2) Evaluating the need for health facilities and services;
- (3) Entering into and performing any contracts, leases, cooperative agreements, or other transactions whatsoever that may be necessary or appropriate in the performance of its purposes and responsibilities, and on terms it may deem appropriate, with either:
  - (A) Any agency or instrumentality of the United States, or with any state, territory, or possession, or with any subdivision thereof; or
  - (B) Any person, firm, association, or corporation, whether operated on a for profit or not for profit basis;
 provided that the transaction furthers the public interest;
- (4) Conducting activities and entering into business relationships as the corporation board deems necessary or appropriate, including but not limited to:
  - (A) Creating nonprofit corporations, including but not limited to charitable fund-raising foundations, to be controlled wholly by the corporation or jointly with others;
  - (B) Establishing, subscribing to, and owning stock in business corporations individually or jointly with others; and
  - (C) Entering into partnerships and other joint venture arrangements, or participating in alliances, purchasing consortia, health insurance pools, or other cooperative arrangements, with any public or private entity; provided that any corporation, venture, or relationship entered into under this section furthers the public interest;



provided further that this paragraph shall not be construed to authorize the corporation to abrogate any responsibility or obligation under paragraph (15);

- (5) Participating in and developing prepaid health care service and insurance programs and other alternative health care delivery programs, including programs involving the acceptance of capitated payments or premiums that include the assumption of financial and actuarial risk;
- (6) Executing, in accordance with all applicable bylaws, rules, and laws, all instruments necessary or appropriate in the exercise of any of the corporation's powers;
- (7) Preparing and executing all corporation budgets, policies, and procedures;
- (8) Setting rates and charges for all services provided by the corporation without regard to chapter 91;
- (9) Developing a corporation-wide hospital personnel system that is subject to chapters 76, 77, and 89;
- (10) Developing the corporation's capital and strategic plans;
- (11) Suing and being sued; provided that the corporation shall enjoy the same sovereign immunity available to the State;
- (12) Making and altering corporation board bylaws for its organization and management without regard to chapter 91;
- (13) Adopting rules, without regard to chapter 91, governing the exercise of its powers and the fulfillment of its purpose under this chapter;
- (14) Entering into any contract or agreement whatsoever, not inconsistent with this chapter or the laws of this State, and authorizing the corporation chief executive officer to enter into all contracts, execute all instruments, and do all things necessary or appropriate in the exercise of the powers granted in this chapter, including securing the payment of bonds;
- (15) Issuing revenue bonds subject to the approval of the legislature; provided that all revenue bonds shall be issued pursuant to part III, chapter 39;
- (16) Reimbursing the state general fund for debt service on general obligation bonds or reimbursable general obligation bonds issued by the State for the purposes of the corporation;
- (17) Pledging or assigning all or any part of the receipts and revenues of the corporation for purposes of meeting bond or health systems liabilities;
- (18) Owning, purchasing, leasing, exchanging, or otherwise acquiring property, whether real, personal or mixed, tangible or intangible, and of any interest therein, in the name of the corporation, which property is not owned or controlled by the State but is owned or controlled by the corporation;
- (19) Maintaining, improving, pledging, mortgaging, selling, or otherwise holding or disposing of property, whether real, personal or mixed, tangible or intangible, and of any interest therein, at any time and manner, in furtherance of the purposes and mission of the corporation; provided that the corporation legally holds or controls the property in its own name; and provided further that the corporation shall not sell, assign, lease, hypothecate, mortgage, pledge, give, or dispose of a substantial portion of its property of any nature;
- (20) Purchasing insurance and creating captive insurers in any arrangement deemed in the best interest of the corporation, including but not limited to funding and payment of deductibles and purchase of reinsurance;

- (21) Acquiring by condemnation, pursuant to chapter 101, any real property required by the corporation to carry out the powers granted by this chapter;
- (22) Depositing any moneys of the corporation in any banking institution within or without the State, and appointing, for the purpose of making deposits, one or more persons to act as custodians of the moneys of the corporation;
- (23) Contracting for and accepting any gifts, grants, and loans of funds, property, or any other aid in any form from the federal government, the State, any state agency, or any other source, or any combination thereof, and complying, subject to this chapter, with the terms and conditions thereof;
- (24) Providing health and medical services for the public directly or by agreement or lease with any person, firm, or private or public corporation or association through or in the health facilities of the corporation or otherwise;
- (25) Approving medical staff bylaws, rules, and medical staff appointments and reappointments for all public health facilities, including without limitation, determining the conditions under which a health professional may be extended the privilege of practicing within a health facility, and adopting and implementing reasonable rules, without regard to chapter 91, for the credentialing and peer review of all persons and health professionals within the facility;
- (26) (A) Investing any funds not required for immediate disbursement in property or in securities that meet the standard for investments established in chapter 88 as provided by the corporation board; provided the investment assists the corporation in carrying out its public purposes; selling from time to time securities thus purchased and held, and depositing any securities in any bank or financial institution within or without the State. Any funds deposited in a banking institution or in any depository authorized in this section shall be secured in a manner and subject to terms and conditions as the corporation board may determine, with or without payment of any interest on the deposit, including, without limitation, time deposits evidenced by certificates of deposit. Any bank or financial institution incorporated under the laws of this State may act as depository of any funds of the corporation and may issue indemnity bonds or may pledge securities as may be required by the corporation board.
- (B) Notwithstanding subparagraph (A), contracting with the holders of any of its notes or bonds as to the custody, collection, securing, investment, and payment of any moneys of the corporation and of any moneys held in trust or otherwise for the payment of notes or bonds and carrying out the contract. Moneys held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds, and deposits of such moneys, may be secured in the same manner as moneys of the corporation, and all banks and trust companies are authorized to give security for the deposits;
- (27) Entering into any agreement with the State including but not limited to contracts for the provision of goods, services, and facilities in support of the corporation's programs, and contracting for the provision of services to or on behalf of the State;
- (28) Having a seal and altering the same at pleasure;

- (29) Waiving, by means that the corporation deems appropriate, the exemption from federal income taxation of interest on the corporation's bonds, notes, or other obligations provided by the Internal Revenue Code of 1986, as amended, or any other federal statute providing a similar exemption;
- (30) Developing internal policies and procedures for the procurement of goods and services, consistent with the goals of public accountability and public procurement practices, but not subject to chapter 103D. However, where possible, the corporation is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption of chapter 103D and shall not subject the corporation to any other provision of chapter 103D;
- (31) Calling upon the attorney general for such legal services as the corporation may require; and
- (32) Having and exercising all rights and powers necessary or incidental to or implied from the specific powers granted in this chapter, which specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter.

(b) The corporation shall not be subject to chapters 36 to 38, 40, and 41D, except as otherwise provided in this chapter.

(c) The duties and powers granted to the corporation may not be used to enter into contractual or business relationships which have the practical effect of allowing or are intended to allow the private sector counterparts to replace existing employee positions or responsibilities within the corporation or its facilities; provided the corporation shall be allowed to enter into such relationships to the extent and for the purposes that the division of community hospitals could have done under collective bargaining contracts which were in effect for the 1995-1996 fiscal year.

**§ -8 Chief executive officer; exempt positions.** (a) The corporation board may appoint, exempt from chapters 76 and 77 and section 26-35(4), a chief executive officer of the corporation whose salary shall be set by the corporation board. The chief executive officer may also appoint up to eighteen other personnel, exempt from chapters 76, 77, and 89, to work directly for the chief executive officer and the corporate board.

(b) The corporation board or its designee may discharge its exempt personnel with or without cause; provided that removal without cause shall not prejudice any contract rights of personnel.

**§ -9 Hiring of attorneys.** The corporation may employ or retain any attorney, by contract or otherwise, for the purpose of representing the corporation in any litigation, rendering legal counsel to the corporation, or drafting legal documents for the corporation.

**§ -10 Regional public health facility management advisory committees.** (a) On the transfer date, there shall be established within the corporation for each region, a public health facility management advisory committee to consist of nine members to be appointed by the chief executive officer of the corporation with the advice of the hospital administrators of the facilities in the affected regions. The members shall serve for a term of four years; provided that upon the initial appointment of the members, two shall be appointed for a term of one year, two for a term of two years, two for a term of three years, and three for a term of four years.

Each management advisory committee shall include medical and health care providers, consumers, and knowledgeable individuals in other appropriate areas such as business and law; provided that at least one member shall be a physician with active medical staff privileges at one of the region's public health facilities. At least three members of the committee shall be consumers.

The management advisory committee for the East Hawaii region shall have three members who reside in the Kau district, three members who reside in the Hamakua/North Hilo districts, and three members who reside in the South Hilo/Puna districts. The management advisory committee for the West Hawaii region shall have not less than three members who reside in the North Kohala/South Kohala districts.

Each committee shall select its own chairperson and vice chairperson and may adopt such rules as it may consider necessary for the conduct of its business.

The members of the committees shall serve without compensation, but shall be reimbursed for traveling expenses incurred in the performance of their duties. The corporation shall provide for the necessary expenses of the committees; provided that no expenses may be incurred without prior authorization by the chief executive officer.

(b) Each committee shall sit in an advisory capacity to the chief executive officer on matters concerning the formulation of regional operational and capital improvement budgets, and the planning, construction, improvement, maintenance, and operation of public health facilities within its respective jurisdiction and shall sit in an advisory capacity to the governor on matters concerning the nominees for positions on the corporation board. Nothing in this section shall be construed as precluding or preventing the committees from coordinating their efforts and activities with the facility administrators within their counties.

(c) Each committee may prepare a report for inclusion with the corporation's annual report and audit which shall include, but not be limited to, comments and analyses on the corporation's regional operational and capital improvement budgets for its respective region.

**§ -11 Executive branch; noninterference.** Notwithstanding any other law to the contrary, the governor and executive branch agencies shall limit their responsibilities to that of review and oversight when the corporation receives general funds from the State to subsidize the operating budgets of deficit facilities. The governor and executive branch agencies shall not interfere with the systemic change, capacity building, advocacy, budget, personnel, system plan development, or plan implementation activities of the corporation. The governor and executive branch agencies shall not interfere with the ability of the corporation to function as a multiple facility public hospital system delivering health care services to the residents of the State.

## PART II. BUDGET AND FINANCE

**§ -21 Fiscal provisions.** (a) There is created in the state treasury a special fund to be known as the health systems special fund into which shall be deposited all fees, proceeds, reimbursements, and the like owed to or received by the corporation and its facilities, except as herein provided. The special fund shall be used solely to fulfill the purposes outlined in this chapter.

The corporation may establish and maintain within its special fund, accounts that may be necessary and appropriate to carry out its purposes and responsibilities.

The corporation may provide reasonable reserves for any of the following purposes:

- (1) Insurance deductibles;

- (2) The improvement, replacement, or expansion of its facilities or services;
- (3) The securing of the corporation's bonds, notes, or other instruments of indebtedness; or
- (4) Any other purpose it deems necessary or appropriate in the performance of its purposes and responsibilities.

(b) The corporation board shall develop annual operating and capital budgets for each facility. The corporation shall develop budgetary guidelines, and may allocate to each facility reasonable corporation administrative costs, including funds determined by the corporation to be needed from or provided to each facility to:

- (1) Repay corporation debts;
- (2) Provide subsidies to any facility determined to be unable to fund from within that facility's programs and services deemed essential to community needs; and
- (3) Maintain appropriate reserves.

(c) The corporation shall develop annual corporation operating and capital budgets, taking into account anticipated surpluses from or subsidies to the facilities pursuant to the annual guidelines described in this section, accumulated corporation reserves and accounts, subsidies, if any, that are determined to be needed from the general fund, and other sources of corporation-wide income as may be identified.

(d) The corporation may share in any facility's surplus and may offset any facility's deficits. Obligations undertaken by a facility shall be paid only from funds of that facility, unless the corporation board or its authorized agent explicitly agrees to guarantee the obligation.

(e) In accordance with each annual facility budget, each facility of the corporation shall:

- (1) Bill and collect for its services;
- (2) Maintain bank accounts; and
- (3) Pay for needed personnel, supplies, equipment, and other operational and capital expenditures.

(f) The corporation may elect to manage its own capital improvement project and funds, either directly or indirectly by contract; provided that annual reports of the project moneys are provided to the governor and legislature.

(g) The corporation board may hold public informational meetings on its budget. Representatives of any county government, state government, or any other person having an interest in the budget, shall have the right to be heard at the meetings.

**§ -22 Annual audit and report; disclosure of revenue projections. (a)**

The corporation shall engage a certified public accountant to conduct an annual audit of its financial affairs, books, and records in accordance with generally accepted accounting principles. The corporation shall submit to the governor and the legislature within one-hundred-fifty days after the close of the corporation's fiscal year, a report that shall include the audited financial report for that fiscal year.

(b) In addition to the submittal of the audit required under subsection (a), the corporation shall submit a report to the legislature at least twenty days prior to the convening of each regular session that shall include but not be limited to:

- (1) The projected revenues for each health care facility;
- (2) A list of all proposed capital improvement projects planned for implementation during the following fiscal year; and
- (3) All reports submitted by regional public health facility management advisory committees pursuant to section -10(c).

§ -23 **Exemption from taxation.** The corporation shall not be required to pay assessments levied by any county, nor shall the corporation be required to pay state taxes of any kind.

§ -24 **Budget oversight.** The corporation's operating and capital improvement budgets shall not be subject to review or approval by the governor or any state agency, except where state general funds or capital improvement moneys are requested. If general funds or capital improvement moneys are requested, then the corporation shall include with its request, the proposed budget for which the funds or moneys are to be included. The corporation shall submit its budgets annually to the legislature for review and approval at least twenty days prior to the convening of the regular legislative session, beginning with the budgets for the 1997-1998 fiscal years.

### PART III. OTHER PROVISIONS

§ -31 **Maintenance of services.** (a) The corporation shall notify the legislature of any planned substantial reduction or elimination of direct patient care services.

(b) No substantial reduction or elimination of direct patient care services at any facility shall be undertaken by the corporation without the approval of the legislature.

(c) The legislature shall maintain review and oversight authority over the provision of direct patient care services provided at each facility and may intervene to counter or restrict any substantial reduction or elimination of patient care services."

SECTION 3. Chapter 76, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**"§76- Employees of the Hawaii health systems corporation.** It is the intent of the legislature that the personnel of the Hawaii health systems corporation shall constitute a separately administered part of the system of personnel administration established by this chapter and chapter 77, unless specifically exempted by this chapter or any other law; provided that:

- (1) The Hawaii health systems corporation shall have a status coequal with the executive branch of the State and with the several counties for purposes of:
  - (A) Developing a position classification plan;
  - (B) Formulating personnel rules; and
  - (C) Administering the Hawaii health systems corporation personnel system, including classification, reclassification, allocation, and reallocation of a particular position; the publication of a vacancy announcement; the examination of applicants; and the preparation of eligible lists;
- (2) In the development of a position classification plan, the formulation of personnel rules and regulations, and the administration of the Hawaii health systems corporation personnel system, the corporation chief executive officer or the corporation chief executive officer's designee shall consult with the director of human resources development;
- (3) Any action of the corporation chief executive officer or the corporation chief executive officer's designee including:
  - (A) The classification, reclassification, allocation, and reallocation of a particular position;

- (B) The publication of a vacancy announcement;
- (C) The examination of applicants;
- (D) The preparation of an eligible list; and
- (E) Appeals from suspensions, dismissals, and demotions not covered by collective bargaining;

may be appealed by any person, employee, or the exclusive bargaining unit representative to the Hawaii health systems corporation personnel appeals board. The board shall be composed of three members, one representative from the department of human resources development, one representative of the Hawaii health systems corporation, and one appropriate exclusive bargaining unit representative. Section 26-34 shall not apply to the members of the Hawaii health systems corporation personnel appeals board. The board shall sit as an appellate body on matters within the jurisdiction of the Hawaii health systems corporation with equal authority as the civil service commission established by section 26-5; and

- (4) Nothing in chapters 76 and 77 shall be construed to require the approval of the governor or any executive agency for the Hawaii health systems corporation to establish such positions in the corporation as may be authorized and funded by the legislature.

**§76- Hawaii health systems corporation; powers and duties.** All of the powers and duties assigned in parts I, IV, and V of this chapter to the governor or the director of human resources development shall with respect to the Hawaii health systems corporation be assigned to the Hawaii health systems corporation chief executive officer or the Hawaii health systems corporation chief executive officer's designee.

**§76- Civil service for the Hawaii health systems corporation.** (a) There shall be a civil service system for the Hawaii health systems corporation. Except as otherwise specifically provided in this section, all of the provisions of part II shall apply to the Hawaii health systems corporation.

(b) All of the powers and duties assigned to the director of human resources development in part II of this chapter, with respect to the Hawaii health systems corporation, shall be exercised by the Hawaii health systems corporation chief executive officer's designee.

(c) When applying part II of this chapter to the Hawaii health systems corporation:

"Department" means the Hawaii health systems corporation.

"Director" means the corporation chief executive officer's designee; and

"Governor" means the corporation chief executive officer;

"State" means the Hawaii health systems corporation."

SECTION 4. Section 28-8.3, Hawaii Revised Statutes, is amended to read as follows:

**[[§28-8.3]] Employment of attorneys.** (a) No department of the State other than the attorney general may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply to the employment or retention of attorneys:

- (1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;

- (2) By any court or judicial or legislative office of the State;
- (3) By the legislative reference bureau;
- (4) By any compilation commission that may be constituted from time to time;
- (5) By the real estate commission for any action involving the real estate recovery fund;
- (6) By the contractors license board for any action involving the contractors recovery fund;
- (7) By the trustees for any action involving the travel agency recovery fund;
- (8) By the office of Hawaiian affairs;
- (9) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485;
- (10) As grand jury counsel;
- (11) By the Hawaiian home lands trust individual claims review panel;
- (12) By the Hawaii health systems corporation or any of its facilities; or
- [(12)] (13) By a department, in the event the attorney general, for reasons deemed by the attorney general good and sufficient, declines, to employ or retain an attorney for a department; provided that the governor thereupon waives the provision of this section.

(b) For purposes of this section the term "department" includes any department, board, commission, agency, bureau, or officer of the State.

(c) Every attorney employed by any department on a full-time basis, except an attorney employed by the public utilities commission, the labor and industrial relations appeals board, the Hawaii labor relations board, the office of Hawaiian affairs, the Hawaii health systems corporation, the department of commerce and consumer affairs in prosecution of consumer complaints, or the Hawaiian home lands trust individual claims review panel, or as grand jury counsel, shall be a deputy attorney general.

(d) All attorneys retained by contract, whether by the attorney general or a department, shall be retained in accordance with chapter 103D."

SECTION 5. Section 37-74, Hawaii Revised Statutes, is amended to read as follows:

**"§37-74 Program execution.** (a) Except as limited by policy decisions of the governor, appropriations by the legislature, and other provisions of law, the several agencies responsible for administering state programs shall administer their program assignments and shall be responsible for their proper management.

(b) The appropriations by the legislature for a biennium shall be allocated between the two fiscal years of the biennium in the manner provided in the budget or appropriations act and as further prescribed by the director of finance. The amounts allocated for each fiscal year shall be subject to the allotment system prescribed in chapter 37, part II. Each agency (except the courts), in estimating its quarterly requirements under chapter 37, part II, shall prepare a plan for the fiscal year for the operation of each of the programs it is responsible for administering. The operations plan shall be in such form and content as the department of budget and finance may prescribe. It shall be submitted, together with the estimated quarterly requirements, to the department of budget and finance on such date as the department may prescribe.

(c) The department of budget and finance shall:

(1) Review each operations plan to determine:

(A) That it is consistent with the policy decisions of the governor and appropriations by the legislature;



- (B) That it reflects proper planning and efficient management methods; and
- (C) That appropriations have been made for the planned purpose and will not be exhausted before the end of the fiscal year; provided that the department of budget and finance shall review the operations plan submitted by the University of Hawaii solely for consistency with the allotment ceilings established by the governor under section 37-34, appropriations by the legislature, and the status of revenues to support operations plans for all state programs;
- (2) Approve the operations plan if satisfied that it meets the requirements under paragraph (1). Otherwise, the department of budget and finance shall require revision of the operations plan in whole or in part; and
- (3) Modify or withhold the planned expenditures at any time during the appropriation period if the department of budget and finance finds that the expenditures are greater than those necessary to execute the programs at the level authorized by the governor and the legislature, or that state receipts and surpluses will be insufficient to meet the authorized expenditure levels; provided that the planned expenditures for the University of Hawaii may be modified or withheld only in accordance with sections 37-36 and 37-37.
- (d) No appropriation transfers or changes between programs or agencies shall be made without legislative authorization; provided that:
  - (1) Authorized transfers or changes, when made, shall be reported to the legislature;
  - (2) The University of Hawaii shall have the flexibility to transfer general fund appropriations for the operating cost category among programs with the same or similar objectives, among cost elements in a program, and between quarters, as applicable; and the [division of community hospitals] Hawaii health systems corporation shall have the flexibility to transfer special fund appropriations among community hospitals [division] facilities as applicable; provided that the [division of community hospitals] Hawaii health systems corporation shall maintain the integrity and services of each individual facility and shall not transfer appropriations out of any facility which would result in a reduction of services offered by the facility, with due regard for statutory requirements, changing conditions, the needs of the programs, and the effective utilization of resources; and
  - (3) The university [and the division of community hospitals] shall account for each transfer implemented under this subsection in quarterly reports to the governor and annual reports at the end of each fiscal year to the legislature and the governor, which shall be prepared in the form and manner prescribed by the governor and shall include information on the sources and uses of the transfer.
- (e) The division of community hospitals shall not use current appropriations in any manner that would result in the expansion of programs or the initiation of new programs that may require any future increase in the commitment of state resources, without the specific prior concurrence of the legislature and advice of the governor.]”

SECTION 6. Section 76-3, Hawaii Revised Statutes, is amended to read as follows:

“§76-3 Uniform administration. It is the intent of the legislature that the system of personnel administration established by this chapter and chapter 77 shall

be as uniformly administered as is practicable. In order to promote such uniformity, the several commissioners and directors of the state department of human resources development and of the county departments of civil service [and], the administrative director of the courts, and the Hawaii health systems corporation chief executive officer's designee shall meet at least once each year at the call of the director of human resources development of the State."

SECTION 7. Section 76-4, Hawaii Revised Statutes, is amended to read as follows:

**"§76-4 Agreements of state [and], county departments [and], judiciary[.], and the Hawaii health systems corporation.** The state department of human resources development, the judiciary, [and], the several departments of civil service of the counties, and the Hawaii health systems corporation may enter into agreements for the joint administration of matters that may be practicable and consistent with this chapter and chapter 77, including the conducting of examinations and other procedures for the establishment and use of eligible lists, reciprocity in the use of eligible lists, and the conducting of salary studies. All eligible lists established or used under the agreements shall be as fully effective as those established or used separately."

SECTION 8. Section 76-5, Hawaii Revised Statutes, is amended to read as follows:

**"§76-5 Service to judiciary and counties by the State.** Subject to the rules of the state department of human resources development, the director of human resources development may enter into agreements with the judiciary [and], any county, and the Hawaii health systems corporation to furnish services and facilities of the state department to the judiciary [and], any county, and the Hawaii health systems corporation in the administration of civil service including position classification in the judiciary [and], any county[.], and the Hawaii health systems corporation. The agreements may provide for the reimbursement to the State of the reasonable value of the services and facilities furnished, as determined by the director. The judiciary [and], all counties, and the Hawaii health systems corporation are authorized to enter into the agreements."

SECTION 9. Section 76-5.5, Hawaii Revised Statutes, is amended to read as follows:

**"[[§76-5.5]] Recruitment flexibility for the counties[.], the judiciary, and the Hawaii health systems corporation.** Notwithstanding section 76-23, or any other provision to the contrary, the directors of the county departments of civil service [and], the administrative director of the courts, and the Hawaii health systems corporation chief executive officer's designee may determine, establish, and maintain the manner in which positions shall be filled in accordance with section 78-1 and the following standards:

- (1) Equal opportunity for all regardless of race, sex, age, religion, color, ancestry, physical handicap, or politics;
- (2) First consideration for competent employees already within public service; and
- (3) Impartial selection of the ablest person through competitive means which are fair, objective, and practical."

SECTION 10. Section 77-1, Hawaii Revised Statutes, is amended by amending the definitions for the terms “chief executive officer”, “department”, “director”, and “fiscal officer”, to read as follows:

““Chief executive officer” means the governor in the case of the State, the chief justice of the supreme court in the case of the judiciary, the chief executive officer in the case of the Hawaii health systems corporation, the mayor in the case of the city and county of Honolulu or the counties of Hawaii, Maui, and Kauai.

“Department” includes the judicial branch, the Hawaii health systems corporation, and any department, board, commission, or agency of the State or any of its political subdivisions.

“Director” means the director of human resources development in the case of the State, the administrative director of the courts in the case of the judiciary, the chief executive officer in the case of the Hawaii health systems corporation, the director of civil service in the case of the city and county of Honolulu, or the respective personnel directors in the case of the counties of Hawaii, Maui, and Kauai.

“Fiscal officer” means the director of finance in the case of the State, the administrative director of the courts in the case of the judiciary, the chief executive officer in the case of the Hawaii health systems corporation, the director of finance in the case of the city and county of Honolulu and the counties of Hawaii, Maui, and Kauai.”

SECTION 11. Section 77-2.5, Hawaii Revised Statutes, is amended to read as follows:

“**[§77-2.5] Applicability of chapter to the judiciary[,] and the Hawaii health systems corporation.** All of the provisions of this chapter apply with equal force to the judiciary and the Hawaii health systems corporation as to the State.”

SECTION 12. Section 77-13, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Salary ranges SC-1, SC-2, and SC-3 shall be utilized in the following manner:

- (1) Salary ranges SC-1, SC-2, and SC-3 may be utilized by the State, the judiciary, [and] counties, and the Hawaii health systems corporation for physician and psychiatrist positions;
- (2) No position shall be classified and paid in salary ranges SC-1, SC-2, and SC-3 unless specifically recommended by the director of human resources development and approved by the governor, recommended by the administrative director of the courts and approved by the chief justice, or recommended by the personnel director of a county and approved by the respective council and mayor[;] or recommended by the Hawaii health systems corporation chief executive officer’s designee and approved by the chief executive officer;
- (3) There shall be at any given period not more than sixteen positions classified and paid in salary ranges SC-1, SC-2, and SC-3 by the State, not more than two positions classified and paid in salary ranges SC-1, SC-2, and SC-3 by the judiciary, and not more than eight positions classified and paid in salary ranges SC-1, SC-2, and SC-3 by any county. Psychiatrist and physician positions shall be excluded from the above-mentioned totals; and

- (4) The director of human resources development, the administrative director of the courts, and the personnel directors of each county shall report annually to the legislature as to the manner in which the positions assigned to salary ranges SC-1, SC-2, and SC-3 are being used.”

SECTION 13. Section 77-13.1, Hawaii Revised Statutes, is amended to read as follows:

**“[[§77-13.1]] Compensation plan for managerial white-collar positions.** (a) The chief executives of the State and counties [and], the chief justice of the supreme court, and the Hawaii health systems corporation chief executive officer shall determine which white-collar positions under this chapter are managerial; provided that no position shall be designated as managerial unless or until the employee occupying such position has been excluded from coverage under chapter 89.

(b) The salary structure for managerial white-collar positions covered under this chapter shall be comprised of such number of salary ranges with each range consisting of such number of steps as the chief executives of the State and counties [and], the chief justice of the supreme court, and the Hawaii health systems corporation deem appropriate under the provisions set forth in chapter 89C.

(c) The salary schedule applicable to employees in managerial white-collar positions shall be subject to chapter 89C.”

SECTION 14. Section 78-51, Hawaii Revised Statutes, is amended to read as follows:

**“§78-51 Applicability of chapter to the judiciary[.] and the Hawaii health systems corporation.** All of the provisions of this chapter apply with equal force to the judiciary and the Hawaii health systems corporation as to the State. The powers and duties assigned in this chapter shall, with respect to the judiciary, be assigned to the chief justice of the supreme court in the place and stead of the governor or chief executive officer for the State, and to the administrative director of the courts in the place and stead of the director of human resources development. The powers and duties assigned in this chapter, with respect to the Hawaii health systems corporation, shall be assigned to the chief executive officer of the Hawaii health systems corporation in the place and stead of the governor or chief executive officer for the State, and to the Hawaii health systems chief executive officer’s designee in the place and stead of the director of human resource development.”

SECTION 15. Section 79-31, Hawaii Revised Statutes, is amended to read as follows:

**“§79-31 Judiciary[;] and the Hawaii health systems corporation; powers and duties.** All of the powers and duties assigned in this chapter to the governor or the director of human resources development [shall], with respect to the judiciary, shall be assigned to the chief justice of the supreme court or the administrative director of the courts[.], and with respect to the Hawaii health systems corporation, shall be assigned to the chief executive officer of the Hawaii health systems corporation or designee.”

SECTION 16. Section 80-21, Hawaii Revised Statutes, is amended to read as follows:

**“§80-21 Judiciary[;] and the Hawaii health systems corporation; powers and duties.** All of the powers and duties assigned in this chapter to the governor or the department or director of human resources development [shall], with respect to the judiciary, shall be assigned to the chief justice of the supreme court or the administrative director of the courts[.], and with respect to the Hawaii health systems corporation, shall be assigned to the chief executive officer of the Hawaii health systems corporation or designee.”

SECTION 17. Section 81-21, Hawaii Revised Statutes, is amended to read as follows:

**“§81-21 Judiciary[;] and the Hawaii health systems corporation; powers and duties.** All of the powers and duties assigned in this chapter to the governor or the director of human resources development [shall], with respect to the judiciary, shall be exercised by the chief justice of the supreme court or the administrative director of the courts[.], and with respect to the Hawaii health systems corporation, shall be assigned to the chief executive officer of the Hawaii health systems corporation or designee.”

SECTION 18. Section 83-4, Hawaii Revised Statutes, is amended to read as follows:

**“§83-4 Judiciary[;] and the Hawaii health systems corporation; powers and duties.** All of the powers and duties assigned in this chapter to the governor or the director of human resources development [shall], with respect to the judiciary, shall be exercised by the chief justice of the supreme court or the administrative director of the courts[.], shall and with respect to the Hawaii health systems corporation, shall be assigned to the chief executive officer of the Hawaii health systems corporation or designee.”

SECTION 19. Chapter 323, Part V, Hawaii Revised Statutes, shall be repealed on June 30, 1998.

SECTION 20. It is the intent of this Act that all rights, powers, functions, assets, and operations of the division of community hospitals be conveyed to the Hawaii health systems corporation, such that all of the activities and services of the division of community hospitals be continued without interruption by the corporation. This Act shall be construed with this intent.

All rights, powers, functions, and duties of the division of community hospitals of the department of health are transferred to the Hawaii health systems corporation on the date agreed to by the department and the corporation for the transfer of such right, powers, functions, and duties (“Transfer date”).

The assets, including but not limited to hospital special funds related to the division of community hospitals, shall be conveyed to the Hawaii health systems corporation in its own name by the department of health on the Transfer date.

Effective on the Transfer date and thereafter, the corporation shall assume the division of community hospitals’ responsibility for all contracts, agreements, and leases for commodities, services, property, and supplies utilized by the division of community hospitals, all of which shall be transferred to the Hawaii health systems corporation including real property leases.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or employee possesses the minimum qualifications for the position to which transferred or appointed.

If an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the executive branch of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State, provided that minimum qualifications are met.

Any officer or employee transferred to the corporation pursuant to this section who is a member of or benefits under any existing pension or retirement fund or system shall continue to have all rights, privileges, obligations, and status with respect to such fund or system as are now prescribed by law, but during the period of employment by the corporation, all contributions to such funds or system to be paid by the employer on account of such officer or employee shall be paid by the corporation.

**SECTION 21.** All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the division of community hospitals of the department of health relating to the functions transferred to the Hawaii health systems corporation shall be transferred with the functions to which they relate.

**SECTION 22.** (a) Within two years after the Transfer date, the corporation in carrying out its duties and responsibilities, shall enter into appropriate agreements with the State to utilize the facilities and real property under the control of the division prior to the effective date of this Act. Each agreement shall be long standing and require compensation of a nominal amount for the use of any facilities or real property. Until the agreements are finalized, the corporation shall be entitled to use the facilities and real property of the division of community hospitals for hospital and health care purposes.

(b) State agencies shall continue to provide to the corporation, without charge for not more than two years after the Transfer date, services that the state agencies provided to the division until the corporation enters into a written contract with the state agencies or chooses to terminate the services.

(c) The corporation shall assume and honor all collective bargaining agreements applicable to employees of the division as of the Transfer date. Upon expiration of those agreements, the corporation may as appropriate and allowable, negotiate collective bargaining agreements or sub-agreements under chapter 89, Hawaii Revised Statutes, to address its needs for efficiency and effectiveness.

(d) Upon the Transfer date, the corporation shall assume and honor all responsibilities and obligations transferred to it from the division of community hospitals regarding the imposition of rates, rents, fees, and charges for the use of public health facilities pursuant to section 323-70, Hawaii Revised Statutes. In no

way shall this Act be construed as allowing either the corporation or the division to abrogate these responsibilities and obligations.

SECTION 23. Changes in services already planned as a result of the opening of the North Hawaii Community Hospital at Kamuela shall not be affected by section 2 of this Act.

SECTION 24. Act 211, Session Laws of Hawaii 1993, is amended by amending section 10 to read as follows:

“SECTION 10. This Act shall take effect on July 1, 1993, and shall be repealed on June 30, [1996, except that section 9 shall be repealed on January 31, 1997.] 1998.”

SECTION 25. Act 188, Session Laws of Hawaii 1994, section 7, as amended by Act 178, Session Laws of Hawaii 1995, is amended to read as follows:

“SECTION 7. This Act shall take effect on July 2, 1994; provided that section 2 shall be repealed on June 30, [1995, and the remaining sections of this Act shall be repealed on June 30, 1996.] 1998.”

SECTION 26. Act 192, Session Laws of Hawaii 1994, section 7 as amended by Act 211, Session Laws of Hawaii 1995, is amended to read as follows:

“SECTION 7. This Act shall take effect upon its approval and sections 1, 2, 4, 5, and 6 shall be repealed on June 30, [1996; provided that section 323-73, Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the approval of this Act.] 1998.”

SECTION 27. Act 193, Session Laws of Hawaii 1994, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon its approval; provided that section 2 shall be repealed on June 30, [1996,] 1998, and section 103D-203, Hawaii Revised Statutes, shall be reenacted in the form in which it existed on the day before the effective date of this Act.”

SECTION 28. Act 211, Session Laws of Hawaii 1995, is amended by amending section 17 to read as follows:

“SECTION 17. This Act shall take effect upon its approval; provided that sections 3 and 4 shall apply retroactive to [July 1, 1993] January 1, 1970, and any funds withdrawn under these sections after May 1, 1995, shall be returned [within ninety days of the approval of this Act.] no later than October 1, 1996.”

SECTION 29. All acts passed prior to or during this regular session of 1996, whether enacted before or after the passage of this Act shall be interpreted to conform to this Act, unless the acts specifically provide that this Act is being amended. In so far as this chapter is inconsistent with the provisions of any other law, this chapter shall be controlling.

SECTION 30. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 31. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 32. This Act shall take effect on July 1, 1996.

(Approved June 19, 1996.)<sup>2</sup>

Notes

1. Edited pursuant to HRS §23G-16.5.

2. This Act was approved on June 19, 1996, which is after the approval date (June 18, 1996) of Acts 266 through 286 and Act 288.

ACT 263

S.B. NO. 3198

A Bill for an Act Relating to Hana Medical Center.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the community of Hana is one of the most isolated areas in the State. Since early 1993, this community has undertaken a mission to address the health care needs of the area, identify the health-related problems in the Hana district, and develop a plan and implementation strategy to improve the health status of the area's residents.

To foster this mission, the Hana Health Committee was created to assure the provision of a community-based program of comprehensive primary care services in a cost-efficient manner by developing and using existing community resources. This committee recently produced a plan, Ho'o Ku'i Kahi, to create a community-based health care program for the Hana district. The plan also recommends an ongoing affiliation between the department of health and a nonprofit community-based organization. This affiliation will, among other objectives, assist in the transition of the Hana Medical Center from a state-operated facility into a nonprofit community health center designed to meet the specific needs of the area and will assure continued state financial support as needed.

The purpose of this Act is to:

- (1) Establish an affiliation between the State through the department of health and the community of Hana through a Hana nonprofit health care organization to support the development of a community-based health care program which will result in the transfer of the Hana Medical Center to a Hana nonprofit health care organization within the next two years;
- (2) Guarantee continuing state financial support to sustain this transition and the development of a community-based health care program; and
- (3) Assure that necessary financial and medical statistical data be made available by the department of health to enable the nonprofit organization and the department to reach a sensible agreement relating to subsidies necessary to keep the nonprofit financially stable.

SECTION 2. The department of health shall enter into a memorandum of agreement with a Hana nonprofit health care organization to support the recommendations of the Hana Health Committee's plan, Ho'o Ku'i Kahi, which shall include the following:

- (1) The department of health, through the division of community hospitals and the family health services division, shall work with and assist the Hana community in the development of a Hana-based nonprofit organization, and a detailed plan for the transition of the Hana Medical Center to a nonprofit organization;



- (2) The department of health shall release the Hana Medical Center from the division of community hospitals, effective July 1, 1997, upon the successful completion of the terms of the agreement and resolution of the following issues:
  - (A) The status of the current state employees working at the Hana Medical Center after the transition to the nonprofit organization;
  - (B) The continuing obligation of the State for ambulance and emergency services;
  - (C) The ability of the nonprofit organization to assume financial responsibility for the Hana Medical Center; and
  - (D) The successful negotiation of lease arrangements and capital improvements for the medical center, adjacent buildings, and the ten acre area, or so much as agreed upon, of the medical center campus.

SECTION 3. The department of health shall submit a report to the legislature no later than twenty days prior to the convening of the 1997 regular session that includes a description of the efforts to date, an explanation of the barriers to completion of the agreement, and recommendations for a process developed in conjunction with the Hana community, to complete the transition of the Hana Medical Center to a Hana community-based care organization.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 19, 1996.)<sup>1</sup>

**Note**

1. This Act was approved on June 19, 1996, which is after the approval date (June 18, 1996) of Acts 266 through 286 and Act 288.

**ACT 264**

H.B. NO. 3417

A Bill for an Act Relating to Motor Vehicle Industry Licensing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 437-1, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~~~§437-1~~~~]]~~ **Legislative findings and declaration.** The legislature finds that the manufacture, distribution, and sales of motor vehicles in the State vitally affects the general economy of the State and the public interest and public welfare[; that the manufacturers of motor vehicles, whose physical manufacturing facilities are not located within the State, and distributors are doing business in the State through their control and relationship and transactions with their dealers, branches, and representatives;] and that the geographical location of Hawaii makes it necessary to insure the availability of motor vehicles and parts and dependable service therefor within the State to protect and preserve the transportation system and the investments of its residents. The legislature declares, on the basis of the foregoing findings, that it is necessary to regulate and to license [motor vehicle manufacturers and distributors and their branches and representatives,] motor vehicle dealers, salespersons, and auctions[, and auctioneers and any other person engaged in the business of selling or purchasing motor vehicles] in the State, in order to prevent frauds, impositions, and other abuses against its residents and to protect and preserve the economy and the transportation system of the State.”

SECTION 2. Section 437-1.1, Hawaii Revised Statutes, is amended by:

1. Amending the definition of "dealer" to read:

"Dealer" includes "auction" as defined in this section or any person not expressly excluded by this chapter engaged in the business of selling, soliciting, offering, or attempting to negotiate sales, purchases, or exchanges of motor vehicles or any interest therein, including options to purchase motor vehicles. "New motor vehicle dealer" means a dealer who engages in the business of selling at wholesale or retail, or both, new motor vehicles or new and used motor vehicles. "Used motor vehicle dealer" means a dealer who engages in the business of selling at wholesale or retail, or both, only used motor vehicles. The term "dealer" excludes a person who sells or purchases motor vehicles in the capacity of:

- (1) A receiver, trustee, personal representative, guardian, or any other person appointed by or acting under a judgment or order of any court;
- (2) A public officer while performing official duties;
- (3) A holder of [a] an auction license issued under this chapter[, other than a dealer,] when acting within the scope of the license;
- (4) An insurance company, finance company, bank, or other financial institution selling or offering for sale motor vehicles repossessed or foreclosed by it under the terms of a credit sale contract or security agreement; or
- (5) A person not engaged in the business of selling or purchasing motor vehicles when acquiring or disposing of motor vehicles for the person's own personal, family, or business use; provided that the vehicles are acquired or disposed of for the person's use in good faith and not for the purpose of evading any provision of this chapter."

2. Deleting the definition of "auctioneer".

[ "'Auctioneer" means a person who, for gain or compensation of any kind, sells or offers for sale or exchange, motor vehicles or any interest therein by means of soliciting bids on behalf of an auction, from a fixed location, and who sells motor vehicles exclusively." ]

SECTION 3. Section 437-2, Hawaii Revised Statutes, is amended to read as follows:

**"§437-2 Licenses.** (a) No person shall engage in the business as or serve in the capacity of, or act as a motor vehicle dealer, motor vehicle salesperson, or motor vehicle auction[, motor vehicle auctioneer, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative in this State] or otherwise engage in the business of selling or negotiating for the purchase of motor vehicles in this State without being licensed as provided in this chapter. A license issued under this chapter shall authorize the holder to engage in the business or activities permitted by the license, only in the county for which the license is issued.

(b) A license issued under this chapter shall authorize the holder to engage in the same business at branch locations in the same county for which the license is issued during the term thereof; provided that each [of such] branch [locations] location is approved by the board.

(c) A dealer's license [or auction's license] issued to a sole proprietorship or partnership shall authorize the sole proprietor or general partner to engage in the business of a salesperson [or auctioneer, respectively,] without a license therefor, only for and in the business of the holder of the dealer's license [or auction's license, as the case may be,] and only for the county in which the license is issued.

(d) In the event of the dissolution of a partnership, holding a current license issued under this chapter, due to the death of one or more partners, the surviving partners may operate the business under the license for the remaining effective term

of the license but not to exceed sixty days. In the event of the death or bankruptcy of the holder of a current license issued under this chapter, the duly appointed personal representative or receiver or trustee in bankruptcy, whichever the case may be, may operate the business under the license for the remaining effective term of the license.

(e) Notwithstanding any provisions of this chapter, the authority of any state or county agency to purchase motor vehicles for state or county use from any dealer licensed under this chapter shall not be limited or conditioned. Any dealer licensed under this chapter may sell vehicles to any state or county agency [notwithstanding subsection (b)].”

SECTION 4. Section 437-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Display of motor vehicle at unlicensed premises. All dealers or salespersons shall obtain prior approval of the board, through its executive officer, to display motor vehicles for advertising purposes at or on any place other than the licensed premises.”

SECTION 5. Section 437-7, Hawaii Revised Statutes, is amended to read as follows:

**“§437-7 Application for issuance or renewal of license.** (a) [Application.] Any person desiring the issuance of a license under this chapter shall file an application therefor with the motor vehicle industry licensing board. Prior to the expiration of the term of a license, the holder shall file an application for renewal of the license. The board shall prescribe the form, information required, manner, and time for presentation of applications for issuance or renewal of licenses issued under this chapter, except as otherwise provided in this chapter.

(b) A person applying for a salesperson’s license [or an auctioneer license] under this section shall be granted a temporary license by the executive [secretary] officer of the board[.]; provided no patent disqualification of the applicant is disclosed or no valid objection to the granting of the temporary license is apparent and if all requirements relative to the filing of the application appear to have been met and the dealer [or auction] files an affidavit certifying that this person is employed by and under the supervision of the dealer [or auction]. A fee shall be charged for the issuance of the temporary license, as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91, and the license shall remain in effect until the board approves or denies the application for a permanent license.

(c) [Financial] Requirements for financial reviews or financial statements[.] shall be as follows:

- (1) Applicants for the issuance of a dealer’s or auction’s license shall furnish the following financial review or financial statement to the board:
  - (A) [Sole proprietorship.] An applicant proposing to operate as a sole proprietorship shall furnish a personal financial review or financial statement and a financial review or financial statement of the proposed business[.];
  - (B) [Partnership.] An applicant proposing to operate as a partnership shall furnish a personal financial review or financial statement for each general partner and a financial review or a financial statement of the partnership[.]; and
  - (C) [Corporation.] A corporate applicant shall submit a corporate financial review or financial statement[.];

- (2) The board shall determine and prescribe the requirement of, form, and information required in financial reviews and financial statements for applicants for other licenses[.];
- (3) All financial reviews and financial statements shall be certified as to accuracy by a public or certified public accountant[.]; and
- (4) The purpose of the financial review and the financial statement is to provide the board with information to assist it in determining the financial capability and integrity of the applicant.

(d) [Line] Requirements for lines of credit[.] shall be as follows:

- (1) Applicants for issuance of a dealer's license shall obtain an inventory or flooring line of credit from a federally insured financial institution or from a financing source having a net worth of at least \$50,000,000. The line of credit shall be in the following amount:
  - (A) For new motor vehicle dealer applicants, \$500,000 or the amount required in the applicant's dealer sales and service agreement, whichever is less;
  - (B) For used motor vehicle dealer applicants, \$50,000; and
  - (C) For new and used motorcycle and motor scooter dealer applicants, \$50,000[.];
- (2) Applicants for issuance of a dealer's license shall provide the board with a photocopy of the financing statement filed at the bureau of conveyances of the department of land and natural resources, securing the line of credit[.];
- (3) Applicants for the issuance of an auction license shall obtain a secured line of credit in the amount of \$100,000 from a federally insured financial institution[.]; and
- (4) When an inventory or flooring line of credit cannot reasonably be obtained by a dealer, the board may provide that a bond, in an amount set forth in the board's rules, be obtained as an alternative form of security for the inventory or flooring line of credit.

(e) Applicants for issuance of an auction license shall provide a written statement from a federally insured financial institution verifying that the applicant has a customer trust account for the auction with that financial institution.

(f) All applicants for the issuance of a new license shall pay a fee concurrently with each application, except the application fee for a new salesperson's [or auctioneer's] license shall be a lesser amount than the fee for other licenses issued under this chapter.

(g) [Investigation and report.] Upon the filing of any application, a staff member shall [indorse] endorse on it the date of filing. If no patent disqualification of the applicant is disclosed or no valid objection to the granting of the application is apparent and if all requirements relative to the filing of the application appear to have been complied with, the [chairperson of the board or] executive [secretary] officer shall refer the application to a staff member for investigation and report. The report shall include:

- (1) A statement as to whether or not the applicant is for any reason disqualified by this chapter from obtaining or exercising a license; and whether or not the licensee has complied with all the requirements of this chapter relative to the making and filing of the licensee's application; [and]
- (2) Information relating to any and all other matters and things which in the judgment of the staff member pertain to or affect the matter of the application or the issuance or the exercise of the license applied for; [and]

- (3) In the case of an application for a dealer's or auction's license in addition to the foregoing:
  - (A) A description of the premises intended to become the licensed premises, and the equipment and surrounding conditions; and
  - (B) If the applicant has held a prior dealer's or auction's license for the same or any other premises within two years past, a statement as to the manner in which the premises have been operated and the business conducted under the previous license[.];

and

- (4) In the case of an application for a dealer's license, if the applicant proposes to engage in the business of selling new motor vehicles, a copy of the dealer sales and service agreement from the applicable manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative.

(h) [Notice of interview.] After the filing of the report, the board may interview the applicant and upon the interview and other information that is before the board, it may grant or deny the license.

(i) [Prior inspection of premises.] No dealer's or auction's license shall be issued under this chapter unless and until the board has caused to be made a thorough inspection of the premises upon which the proposed business is to be conducted and is satisfied that it has met all the requirements as provided in this chapter and that all other general conditions and proposed methods of operation under the license are such as are suitable for carrying on the business in a reputable manner.

- (j) [Limitation on license.] Limitations on licenses shall be as follows:

- (1) A dealer's or auction's license issued under this chapter shall authorize the doing of the business at the licensed premises, the boundaries of which shall be determined by the map or plan submitted together with the application for license approved by the board; except in the case of an enlargement or reduction of the licensed premises with the approval of the board [indorsed] endorsed on an amended map or plan[.]; and
- (2) A license issued under this chapter shall authorize the doing of a business thereunder only for the county in which the license has been issued; and in the case of a salesperson [or auctioneer], the license shall authorize the salesperson [or auctioneer] to be a salesperson [or auctioneer] only for the dealer [or auctions respectively] named in the application for a license or an amended license.

(k) [Motorcycles and motor scooters.] A used motor vehicle dealer's license shall authorize the holder to sell new motorcycles and motor scooters if the licensee is franchised therefor.

(l) The executive officer may grant preliminary approval of a dealer or auction license application if all licensing requirements have been met and the applicant's inspection report is satisfactory. The board shall ratify all preliminary approvals."

SECTION 6. Section 437-21.1, Hawaii Revised Statutes, is amended to read as follows:

**"§437-21.1 Bonds of auctions.** The bond of an auction shall be in the same amount and under the same terms and conditions as required for a new motor vehicle dealer [under section 437-17.] in accordance with rules adopted by the motor vehicle industry licensing board."

SECTION 7. Section 437-24, Hawaii Revised Statutes, is amended to read as follows:

**“§437-24 Licenses terminate, when.** (a) [General.] Any license issued pursuant to this chapter shall terminate upon the permanent or temporary cessation of the business or activity for which it was issued.

(b) [Salesperson’s or auctioneer’s license.] A salesperson’s [or auctioneer’s] license shall terminate upon the termination of the license of the dealer [or auction, respectively,] by whom the salesperson [or auctioneer] is employed [(if employed by only one auction)] or upon the termination of the salesperson’s [or auctioneer’s] employment [(if employed by only one auction)].

(c) [Delivery to board of license.] Upon the termination, suspension, or revocation of a license, the holder shall deliver it to the board.

(d) [License reissued, when.] Where the termination is not the result of suspension or revocation by the board for cause, the board shall reissue the license to the holder without cost if the holder resumes the holder’s business or employment within the term for which it was issued.”

SECTION 8. Section 437-25, Hawaii Revised Statutes, is amended to read as follows:

**“§437-25 Amended licenses.** (a) [Application.] Prior to entering the employ of a dealer [or auction], other than the one for which the salesperson’s [or auctioneer’s] license was issued, a salesperson [or auctioneer, respectively,] shall apply to the board for an amended license authorizing the new employment. Prior to moving or amending the premises or adding branch locations of a business for which a license was issued under this chapter, the holder shall apply for an amended license authorizing the change.

(b) [Issuance.] The executive [secretary] officer of the board is authorized to issue the amended license of a salesperson [or auctioneer] subject to the ratification by the board for the first three amendments to a license during the original term thereof. The board shall issue the fourth and following amendments to such license during the term of the original license. The executive [secretary is authorized to] officer may issue an amended license for new or amended premises or for additional branch locations of the business under a license subject to the board’s ratification; provided that the executive [secretary shall] officer may not issue an amended license when a prior amendment to the same license has not been acted upon by the board. Unless good cause exists, the amended license shall be freely issued for the remainder of the original term.

(c) The fees for amended licenses shall be as provided in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91.”

SECTION 9. Section 437-27, Hawaii Revised Statutes, is amended to read as follows:

**“§437-27 Change of status, notice.** If the status of any licensee changes during the period for which the license is issued in respect to:

- (1) Changes in officers, directors, or limited partners of the licensee or termination of the employment of any licensed salesperson [or auctioneer]; [or]
- (2) The transfer of more than ten per cent of the ownership of the licensee to one person; [or]
- (3) The termination of a licensed premises by a dealer or auction or the acquiring or termination of a franchise; or
- (4) The assignment of any part of the licensee’s assets for the benefit of creditors;

the licensee shall within fifteen days thereafter file with the board notice of such change containing such information as may be required by the board; provided that nothing contained in this section shall limit the power of the board to suspend, revoke, or deny the renewal of such license or impose any other penalty authorized by this chapter."

SECTION 10. Section 437-28, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to any other actions authorized by law, the board, after notice and hearing as provided in chapter 91, and subject to appeal to the circuit court of the circuit in which the board has jurisdiction under the procedure and rules prescribed by the laws of the State or the applicable rules of the courts pertaining to appeals to circuit courts, may suspend, revoke, fine, or deny the renewal of any license, or prior to notice and hearing deny the issuance of any license for any cause authorized by law, including but not limited to circumstances where the board finds that the applicant or holder, or any officer, director, general manager, trustee, partner, or stockholder owning more than ten per cent interest of the applicant or holder:

- (1) Has intentionally made a false statement of a material fact in the application for a license or in any other statement required by this chapter or has obtained or attempted to obtain a license by fraud or misrepresentation;
- (2) Has failed to comply, observe, or adhere to any provision of this chapter or any other law relating to the sale, taxing, or licensing of motor vehicles or any rule or order made pursuant to this chapter;
- (3) Has committed a fraudulent act in selling, purchasing, or otherwise dealing in motor vehicles or has misrepresented the terms and conditions of a sale, purchase, or contract for sale or purchase of a motor vehicle or any interest therein including an option to purchase motor vehicles;
- (4) Has engaged in business under a past or present license issued pursuant to this chapter, in a manner as to cause injury to the public or to those with whom one is dealing;
- (5) Has failed to comply, observe, or adhere to any law in any other respect on account whereof the board may deem the applicant or holder to be an unfit or improper person to hold a license;
- (6) Has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license;
- (7) Is insolvent or has filed or is the subject of petition for bankruptcy, wage earner's plan, or financial reorganization plan; or has made or proposes to make an assignment for benefit of creditors;
- (8) In the case of an individual applicant or holder of a license, if the applicant or holder is not at least eighteen years of age; in the case of a partnership applicant or holder of a license, if any general or limited partner thereof is not at least eighteen years of age;
- (9) Has charged more than the legal rate of interest on the sale or purchase or attempted sale or purchase or in arranging the sale or purchase of a motor vehicle or any interest therein including an option to purchase;
- (10) Has violated any of the laws pertaining to false advertising or to credit sales in the offering, soliciting, selling, or purchasing, or arranging to sell or purchase a motor vehicle or any interest therein;
- (11) Has wilfully failed or refused to perform any unequivocal and indisputable obligation under any written agreement involving the sale or

- purchase of a motor vehicle or any interest therein including an option to purchase;
- (12) Has been denied the issuance of a license under this chapter for substantial culpable cause or for having had a license issued under this chapter suspended, revoked, or the renewal thereof denied for substantial culpable cause;
- (13) Has entered or has attempted to enter or proposes to enter into any contract or agreement contrary to this chapter or any rule adopted thereunder;
- (14) Has been or is engaged or proposes to engage in the business of selling new motor vehicles as a dealer or auction without a proper franchise therefor;
- (15) Has at any time employed or utilized or attempted or proposed to employ or utilize any person not licensed under this chapter who is required to be so licensed;
- (16) Has entered or attempted to enter any one-payment contract, where the contract is required to be signed by the purchaser prior to removal of the motor vehicle for test driving from the seller's premises;
- (17) Being a salesperson or dealer:
  - (A) Has required a purchaser of motor vehicles as a condition of sale and delivery thereof to purchase special features, appliances, accessories, or equipment not desired or requested by the purchaser; provided that this prohibition shall not apply as to special features, appliances, accessories, or equipment which are ordinarily installed on the vehicle when received or acquired by the dealer;
  - (B) Has represented and sold as an unused motor vehicle any motor vehicle which has been operated as a demonstrator, leased, or U-drive motor vehicle;
  - (C) Has sold a new motor vehicle without providing or securing for the purchaser the standard factory new car warranty for the vehicle, unless the dealer or salesperson clearly notes in writing on the sales contract that the new motor vehicle is sold without the standard factory warranty;
  - (D) Has sold a new motor vehicle covered by a standard factory warranty without informing the purchaser in writing that any repairs or other work necessary on any accessories which were not installed by the manufacturer of the vehicle may not be obtainable in a geographic location other than where the purchase occurred; provided that the notice required by this section shall conform to the plain language requirements of section 487A-1, regardless of the dollar amount of the transaction; or
  - (E) Has engaged in any improper business conduct;
- (18) Being an applicant or holder of a dealer's license:
  - (A) Has sold or proposed to sell new motor vehicles without providing for the maintenance of a reasonable inventory of parts for new vehicles or without providing and maintaining adequate repair facilities and personnel for new vehicles at either the main licensed premises or at any branch location;
  - (B) Has employed or proposed to employ any salesperson who is not duly licensed under this chapter; or
  - (C) Has sold or proposed to sell new motor vehicles without being franchised therefor;
- (19) Being an applicant or holder of an auction's license[



- (A) Has employed or proposed to employ any auctioneer who is not licensed under this chapter; or
- (B) Has] has sold or proposed to sell new motor vehicles without being franchised therefor;
- (20) Being an applicant for a salesperson's license:
  - (A) Does not intend to be employed as a salesperson for a licensed motor vehicle dealer;
  - (B) Does not intend to be employed as a salesperson as the principal occupation; or
  - (C) Intends to be employed as a salesperson for more than one dealer[;
- (21) Being a motor vehicle auctioneer, does not intend to be employed as such by a licensed auction under this chapter; or
- (22) Being a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative:
  - (A) Has attempted to coerce or has coerced any dealer in this State to enter into any agreement with the manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or any other party, to perform any act not required by or to refrain from performing any act not contrary to the reasonable requirements of the franchise agreement with the dealer, by threatening to cancel the franchise agreement or by threatening to refuse, at the expiration of the current franchise agreement, to enter a new franchise agreement with the dealer;
  - (B) Has attempted to coerce or coerced any dealer in this State to enter into any agreement with the manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative, or any other party, to perform any act not required by or to refrain from performing any act not contrary to the reasonable requirements of the franchise agreement with the dealer, by awarding or threatening to award a franchise to another person for the sale of the same make of any motor vehicle in the same sales area of responsibility covered by the existing franchise agreement of the dealer;
  - (C) Has attempted to or has canceled or failed to renew the franchise agreement of any dealer in this State without good faith, as defined herein. Upon the cancellation or failure to renew the franchise agreement, the party canceling or failing to renew the franchise agreement, at the dealer's option, shall either compensate the dealer at the fair market going business value for the dealer's capital investment, which shall include but not be limited to the going business value of the business, goodwill, property, and improvement owned or leased by the dealer for the purpose of the franchise, inventory of parts, and motor vehicles possessed by the dealer in connection with the franchise, plus reasonable attorney's fees incurred in collecting compensation; provided that the investment shall have been made with reasonable and prudent judgment for the purpose of the franchise agreement; or compensate the dealer for damages including attorney's fees as aforesaid, resulting from the cancellation or failure to renew the franchise agreement. As used in this paragraph, "good faith" means the duty of each party to any franchise agreement fully to comply with that agreement, or to act in a fair and equitable manner towards each other;

- (D) Has delayed delivery of or refused to deliver without cause, any new motor vehicle to a dealer, franchised to sell the new motor vehicle, within a reasonable time after receipt of a written order for the vehicle from the dealer. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a dealer who has not received delivery thereof, but who had placed the written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be prima facie evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle without cause. The nondelivery of a new motor vehicle to a dealer within sixty days after receipt of a written order for the vehicle from a dealer shall also be prima facie evidence of delayed delivery of, or refusal to deliver, a new motor vehicle without cause; provided that the delayed delivery of, or refusal to deliver, a motor vehicle shall be deemed with cause if the manufacturer establishes that the delay or refusal to deliver is due to a shortage or curtailment of material, labor, transportation, utility service, labor or production difficulty, or other similar cause beyond the reasonable control of the manufacturer;
- (E) Has discriminated against any of their franchised dealers in this State by directly or indirectly charging the dealer more for a new motor vehicle or services, parts, or accessories or a higher rate of transportation for transporting the vehicle from the manufacturing or assembly plant to the dealer or any portion of the distance, than is charged to any other of their franchised dealers in other states for the same make, model, and year of a new motor vehicle or for the same services, parts, or accessories or for similar transportation for the vehicle during the same period. A manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative who provides or causes to be provided greater transportation benefits for a new motor vehicle as aforesaid to any of their franchised dealers in other states than is provided to any of their franchised dealers in this State for the same or lesser price or charge than that imposed upon the franchised dealer in this State during the same period is deemed to have so discriminated against the franchised dealer in this State. Evidence of similar discriminatory practice against franchised dealers in other states shall not constitute a defense to or justification of the commission of the discriminatory act against the franchised dealer in this State. The intent and purpose of this subparagraph is to eliminate inequitable pricing policies set by manufacturers, factory branches, factory representatives, distributors, distributor branches, or distributor representatives which result in higher prices of new motor vehicles to the consumer in this State. This subparagraph shall be liberally interpreted to effect its intent and purpose and in the application thereof, the substance and effect and not the form of the acts and transactions shall be primarily considered in determining whether a discriminatory act has been committed. Nothing contained in this subparagraph shall prohibit establishing delivered prices or destination charges to dealers in this State which reasonably reflect the seller's total transportation costs incurred in the manufacture or delivery of products to the dealers, including costs that are related

to the geographical distances and modes of transportation involved in shipments to this State, or which meet those lower prices established by competitors;

- (F) Has required a dealer of new motor vehicles in this State as a condition of sale and delivery of new motor vehicles to purchase special features, appliances, accessories, or equipment not desired or requested by the dealer; provided that this prohibition shall not apply to special features, appliances, accessories, or equipment, except heaters, that are regularly installed on that particular model of new motor vehicles as “standard” equipment or to special features, appliances, accessories, or equipment that are an integral part of the new motor vehicles and cannot be removed therefrom without substantial expense;
- (G) Has failed to adequately and fairly compensate its dealers for labor, parts, and other expenses incurred by the dealer to perform under and comply with manufacturer’s warranty agreements. In no event shall any manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative pay its dealers a labor rate per hour for warranty work that is less than that charged by the dealer to the retail customers of the dealer nor shall the rates be more than the retail rates. All claims made by dealers for compensation for delivery, preparation, and warranty work shall be paid within thirty days after approval and shall be approved or disapproved within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval;
- (H) Has wilfully failed to affix the vehicle bumper impact notice pursuant to section 437-4.5(a), or wilfully misstated any information in the notice. Each failure or misstatement is a separate offense; or
- (I) Has wilfully defaced, altered, or removed the vehicle bumper impact notice required by section 437-4.5(a) prior to delivery of the vehicle, to which the notice is required to be affixed, to the registered owner or lessee. Each wilful defacement, alteration, or removal is a separate offense].”

SECTION 11. Section 437-29, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) [Notice to treasurer. A copy of] Notification of the application of each dealer or auction [executed and] approved by the board, or a report of the suspension, revocation, or change of status of a dealer’s or auction’s license shall be furnished to the [treasurer] affected county motor vehicle registration division or finance department promptly upon the granting, suspension, revocation, or change of status of the license.”

SECTION 12. Section 437-35, Hawaii Revised Statutes, is amended to read as follows:

“**§437-35 Penalty.** Any person who violates any provision of this chapter or rules of the board, or who engages in the business as, or serves in the capacity of, or acts as a motor vehicle dealer, motor vehicle salesperson, or motor vehicle auction[, motor vehicle auctioneer, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative] in the State or otherwise

engages in the business [or] of selling or negotiating for the purchase of motor vehicles in this State without being licensed as provided in this chapter shall be fined not more than \$1,000 and each day's violation or failure to comply shall be deemed a separate offense."

SECTION 13. Section 437-35.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[[§437-35.5]]] Misdemeanor.** Any person who is convicted of violating any provision of this chapter or rules of the board, or who engages in the business as or serves in the capacity of, or acts as a motor vehicle dealer, motor vehicle salesperson, or motor vehicle auction[, motor vehicle auctioneer, manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative] in the State or otherwise engages in the business [or] of selling or negotiating for the purchase of motor vehicles in this State without being licensed as provided in this chapter shall have committed a misdemeanor and be subject to a fine of not more than \$1,000 or imprisoned not more than one year, or both."

SECTION 14. Section 437-39, Hawaii Revised Statutes, is amended to read as follows:

"**§437-39 Enforcement.** When necessary, the board may enforce [the provisions of] this [act] chapter, including any rule [or regulation promulgated] adopted thereunder or decision rendered thereunder by applying to the circuit court for any relief which may be appropriate, including injunctive relief. Further, the board may apply to the circuit court for any relief which may be appropriate including injunctive relief to enjoin any licensee or other person who violates or threatens to violate any provision of this chapter, including any rule [or regulation promulgated] adopted thereunder."

SECTION 15. Section 437-2.5, Hawaii Revised Statutes, is repealed.

SECTION 16. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 17. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 18. This Act shall take effect upon its approval.

(Approved June 19, 1996.)<sup>2</sup>

#### Notes

1. Edited pursuant to HRS §23G-16.5.

2. This Act was approved on June 19, 1996, which is after the approval date (June 18, 1996) of Acts 266 through 286 and Act 288.

## ACT 265

S.B. NO. 2145

A Bill for an Act Relating to Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 296-40.7, Hawaii Revised Statutes, is amended to read as follows:

“**[[§296-40.7]] Public school facilities.** The department of education may enter into such contracts, leases, lease-purchase agreements, or other transactions as may be necessary for the acquisition of public school facilities, including any lands for these facilities, on such terms as it may deem appropriate, subject to [the provisions imposed upon it by law.] approval by the comptroller.”

SECTION 2. If S.B. No. 2446<sup>1</sup> is passed by the legislature in any form during this regular session of 1996, whether before or after the effective date of this Act, then section -1606, Hawaii Revised Statutes, as contained in section 2 of S.B. No. 2446,<sup>1</sup> as the case may be, shall be amended to reflect the amendment of section 296-40.7, Hawaii Revised Statutes, in this Act.

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 19, 1996.)<sup>2</sup>

#### Notes

1. Act 89.

2. This Act was approved on June 19, 1996, which is after the approval date (June 18, 1996) of Acts 266 through 286 and Act 288.

## ACT 266

H.B. NO. 291

A Bill for an Act Relating to the University of Hawaii Board of Regents.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 26-11, Hawaii Revised Statutes, is amended to read as follows:

“**§26-11 University of Hawaii.** (a) The University of Hawaii shall be headed by an executive board to be known as the board of regents.

[The board of regents shall appoint and may remove an executive officer to be known as the president of the University of Hawaii.]

The board shall consist of eleven members. No more than six of the members shall be members of the same political party and at least part of the membership of the board shall represent geographic subdivisions of the State.

The board shall have power, in accordance with the Constitution of the State and with law, to formulate policy, and to exercise control over the university through its executive officer, the president of the university. The board shall have exclusive jurisdiction over the internal organization and management of the university.

(b) The board of regents shall appoint and may remove:

(1) An executive officer to be known as the president of the University of Hawaii; and

(2) An ex-officio student member as a representative to each of its standing committees except the committee on personnel relations; provided that the board may appoint the same student member to each of its standing committees or may appoint more than one student member to any one standing committee. The student member shall be a non-voting member of the standing committee and shall be excluded from executive sessions. For the purposes of this section, the student member's presence shall not count toward a quorum as defined in section 92-15.

The University of Hawaii as heretofore constituted as a body corporate is continued as the University of Hawaii established by this chapter.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

ACT 267

H.B. NO. 1866

A Bill for an Act Relating to Public Agency Meetings.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to improve the ability of boards to conduct the public’s business without compromising the basic principle of the Sunshine Law that discussions, deliberations, decisions, and actions of governmental agencies should be conducted openly as established in part I, chapter 92, Hawaii Revised Statutes.

The legislature finds that members of boards are inclined to ask questions of one another, especially when one member may possess expertise or know the history of a matter or the processes of the board better than another member. The legislature is aware that members of boards have been advised that the Sunshine Law precludes a member of a board from seeking any information or orientation on the practices and history of their boards from other board members unless it takes place in a duly noticed public meeting. The legislature recognizes that there are instances when it is appropriate for interactions to occur between members of a board or between members of a board and certain other parties outside the realm of a public meeting. The legislature also recognizes that there may be occasions when an unanticipated event may require a board to take immediate action. Accordingly, the purpose of this Act is to specify those instances and occasions in which members of a board may discuss certain board matters or conduct an emergency public meeting in a manner that does not undermine the essence of open government.

SECTION 2. Chapter 92, Hawaii Revised Statutes, is amended by adding to part I a new section to be appropriately designated and to read as follows:

**“§92- Permitted interactions of members.** (a) Two members of a board may communicate or interact privately between themselves to gather information from each other about official board matters to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought.

(b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:

- (1) Investigate a matter relating to the official business of their board; provided that:
  - (A) The scope of the investigation and the scope of each member’s authority are defined at a meeting of the board;
  - (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and
  - (C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held

subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board;

or

- (2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion or negotiation.

(c) Discussions between two or more members of a board, but less than the number of members which would constitute a quorum for the board, concerning the selection of the board's officers may be conducted in private without limitation or subsequent reporting.

(d) Discussions between the governor and one or more members of a board may be conducted in private without limitation or subsequent reporting; provided that the discussion does not relate to a matter over which a board is exercising its adjudicatory function.

(e) Discussions between two or more members of a board and the head of a department to which the board is administratively assigned may be conducted in private without limitation; provided that the discussion is limited to matters specified in section 26-35.

(f) Communications, interactions, discussions, investigations, and presentations described in this section are not meetings for purposes of this part."

SECTION 3. Section 92-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in subsection (a). [This part shall not apply to any chance meeting at which matters relating to official business are not discussed.] No chance meeting,<sup>1</sup> permitted interaction, or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power."

SECTION 4. Section 92-8, Hawaii Revised Statutes, is amended to read as follows:

**"§92-8 Emergency meetings.** (a) If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting provided[: that:

- (1) The board states in writing the reasons for its findings;
- (2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;
- (3) An emergency agenda and the findings are filed with the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office; and
- (4) Persons requesting notification on a regular basis are contacted by mail or telephone as soon as practicable.

(b) If an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, within less time than is provided for in section 92-7 to notice and convene a meeting of the board, the board may hold an emergency meeting to deliberate and decide whether and how to act in response to the unanticipated event; provided that:

- (1) The board states in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary and the attorney general concurs that the conditions necessary for an emergency meeting under this subsection exist;
  - (2) Two-thirds of all members to which the board is entitled agree that the conditions necessary for an emergency meeting under this subsection exist;
  - (3) The finding that an unanticipated event has occurred and that an emergency meeting is necessary and the agenda for the emergency meeting under this subsection are filed with the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office;
  - (4) Persons requesting notification on a regular basis are contacted by mail or telephone as soon as practicable; and
  - (5) The board limits its action to only that action which must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7.
- (c) For purposes of this part, an "unanticipated event" means:<sup>1</sup>
- (1) An event which members of the board did not have sufficient advance knowledge of or reasonably could not have known about from information published by the media or information generally available in the community;
  - (2) A deadline established by a legislative body, a court, or a federal, state, or county agency beyond the control of a board; or
  - (3) A consequence of an event for which reasonably informed and knowledgeable board members could not have taken all necessary action."

SECTION 5. The attorney general shall submit a report to the legislature twenty days prior to the convening of the 1997 Regular Session regarding the instances, purposes, and outcomes of emergency meetings held pursuant to section 4 of this Act.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 7. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

#### Notes

1. Should be underscored.

2. Edited pursuant to HRS §23G-16.5.

## ACT 268

H.B. NO. 2636

A Bill for an Act Relating to Controlled Substances.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that:

- (1) The inappropriate, nonmedical use of illicit prescription drugs is a serious public health concern;
- (2) According to the 1990 National Household Survey on Drug Abuse, an estimated 8,500,000 people twelve years or older used controlled seda-



- tives, tranquilizers, stimulants, or analgesics for nonmedical reasons at least once during the preceding year;
- (3) According to the National Institute on Drug Abuse sponsored Drug Abuse Research Survey of drug treatment facilities around the country, of the principal drugs being abused, approximately ten per cent were drugs that may be prescribed;
  - (4) In fiscal year 1995-1996, the narcotics enforcement division of the department of public safety investigated five hundred and seventy-one reported cases directly related to pharmaceutical controlled substances;
  - (5) The Drug Enforcement Administration has estimated that the illegal diversion of legal controlled substances constitutes a \$25,000,000,000 a year market;
  - (6) Drug use is straining the health care system. In 1993, almost 500,000 drug-related emergencies occurred across the nation;
  - (7) A federal health and human services inspector general has reported that roughly one out of sixteen seniors—between 1,500,000 and 2,000,000 people—are addicted or at risk of addiction to benzodiazepenes (i.e., tranquilizers such as Valium, Librium, Xanax, and Halcion). This addiction has been referred to as “America’s other drug problem”;
  - (8) It is the policy of this State that any retail monitoring system, in order not to impede the appropriate prescribing and use of prescription drugs, must not be unduly burdensome to prescribing physicians, and must fully protect the legitimate confidentiality concerns of patients; and
  - (9) A controlled substance electronic accountability prescription system will efficiently and effectively detect and reduce the use of retail prescription practices to obtain prescription drugs for improper purposes.

The purpose of this Act is to improve the State’s ability to stop the illegal diversion of prescription drugs in an efficient and cost-effective manner that will not impede the appropriate prescribing of pain-killing and other prescription drugs and to ensure the full protection of patients’ interest in preserving the confidentiality of sensitive medical information.

SECTION 2. Chapter 329, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

## **“PART . ELECTRONIC PRESCRIPTION ACCOUNTABILITY SYSTEM**

**§329-A Reporting of dispensation of controlled substances; electronic prescription accountability system; requirements; penalty.** (a) A controlled substance electronic accountability prescription system shall be established within six months of the effective date of this part.

(b) The designated state agency shall determine those schedules of controlled substances, classes of controlled substances, and specific controlled substances that are purportedly being misused and abused in the State. No identified controlled substances may be dispensed unless information relevant to the dispensation of the substance is reported electronically or by universal claim form to the central repository established under section 329-B, in accordance with rules adopted by the department.

(c) The information required by this section shall be transmitted: on an electronic device that is compatible with the receiving device of the central repository; or by computer diskette, magnetic tape, or pharmacy universal claim form that meets the specifications provided in the rules of the designated state agency.

Effective no later than six months after the effective date of this part, the information to be transmitted under subsection (b) shall include at least the following for each dispensation:

- (1) The patient's name;
- (2) The patient's identification number;
- (3) The patient's date of birth;
- (4) The eight-digit national drug code number of the substance dispensed;
- (5) The date of dispensation;
- (6) The number of refills authorized;
- (7) The practitioner's Drug Enforcement Administration registration number;
- (8) The pharmacy's National Association of Boards of Pharmacy number and location; and
- (9) The practitioner's practice specialty and subspecialties, as determined by the applicable licensure boards.

(d) Under the system:

- (1) Information shall be reported in numerical format, not less than once every seven days, on the filling of prescriptions for designated controlled substances and the dispensing of drug samples by a licensed practitioner; and
- (2) Each dispenser shall maintain a record of such filled prescriptions, including all information described in subsection (c), for a period of two years. Each dispenser shall keep these records available for inspection and copying by the designated state agency.

(e) The system shall provide for the use of a central repository in accordance with section 329-B. The operation of the system shall be overseen by the designated state agency. The system shall include provisions to protect the confidentiality of information in the system, in accordance with section 329-D.

(f) Intentional or knowing failure to transmit any information as required by this section shall be a misdemeanor.

**§329-B Central repository.** (a) Except as provided in subsection (b), the transmittal of information under this section shall be made: through an electronic transmitting device that is compatible with the receiving device of the central repository; or by computer diskette, magnetic tape, or other appropriate electronic means that meets the specifications provided by rules of the designated state agency.

(b) The administrator may exempt individual dispensing entities from the electronic information reporting requirements of subsection (a) if:

- (1) The imposition of the requirement would result in financial hardship for a particular pharmacy; and
- (2) The pharmacy agrees to provide the information to the designated state agency through use of a pharmacy universal claim form.

(c) The administrator, in consultation with the state pharmacist membership organizations and applicable licensure boards, shall develop policies that account for the transmission of data fields in section 329-A that include unintentional data errors. Data errors collected by the designated state agency shall be presumed to be accidental in nature, unless a pattern of transmission errors occurs as determined by the agency.

(d) The system shall provide for the maintenance of information collected in a central repository that meets the following requirements:

- (1) The central repository shall be a data processing system maintained by, or under contract with, the designated state agency. The system shall be capable of aggregating and displaying the collected information in

formats required by the designated state agency, including reports showing controlled substances by the:

- (A) Practitioner's name, practice specialty and subspecialties, and identifying number or numbers as specified by the designated state agency, including the practitioner's Drug Enforcement Administration registration number;
  - (B) Pharmacy's name, National Association of Boards of Pharmacy number, and registration number;
  - (C) Patient's name, identification number, and date of birth; and
  - (D) Eight-digit national drug code number, frequency of use, quantity, number of refills, and whether new or refill prescription;
- (2) The central repository shall provide the designated state agency with continual, twenty-four hour per day, on-line access to information;
  - (3) The central repository shall secure the information against access by unauthorized persons and shall be subject to review and oversight by the administrator or the administrator's designee, to ensure the security of the information and the system;
  - (4) If the central repository is not operated by the designated state agency, the vendor-repository:
    - (A) Shall provide information in response to the designated state agency's inquiries within twenty-four hours and shall provide routine reports on a regular schedule to be specified by the designated state agency; and
    - (B) Shall not withhold access to the collected information for any reason other than failure of the designated state agency to pay agreed fees and charges for the use of the central repository;
  - and
  - (5) If the relationship between the designated state agency and the vendor-repository is terminated, the vendor-repository shall provide to the designated state agency within thirty days all collected information, the database maintained by the vendor-repository, and such software as is needed to access the information and the database.

(e) The administrator shall select the most overall cost-effective and efficient computerization system, and automatic data processing services and equipment, to ensure the successful implementation of the system. The administrator may enter into a contract with a vendor to implement the central repository. The repository may include an existing system, such as the State's medicaid management information system, or other existing computerization systems and automated data processing services available to the designated state agency.

(f) All prescriptions for schedule II and other controlled substances designated by the designated state agency that are processed by an out-of-state pharmacy shall conform to reporting and registration requirements adopted by the State, and to any additional rules the department adopts.

**§329-C Designated state agency.** The designated state agency shall:

- (1) Oversee and administer the collection of information under the system;
- (2) Control access to the information in the system; and
- (3) Produce exception reports as defined in section 329-1.

**§329-D Confidentiality of information; disclosure of information.** (a)

The information collected under this part shall not be available to the public or used for any commercial purpose. Ownership of all data collected shall reside with the State.

(b) Responsibility for limiting access to information in the system is vested in the administrator. Access to the information collected at the central repository pursuant to this part shall be confidential, and access to the information shall be limited to:

- (1) Personnel of the designated state agency; and
- (2) The Drug Enforcement Administration diversion group supervisor.

(c) This section shall not prevent the disclosure, at the discretion of the administrator, of investigative information to: law enforcement officers; investigative agents of federal, state, or county law enforcement agencies; prosecuting attorneys; or the attorney general, in furtherance of criminal investigations or prosecutions within their respective jurisdictions; provided that the administrator has reasonable grounds to believe that the disclosure of any information collected under this part is in furtherance of an ongoing investigation.

(d) No person shall knowingly disclose or attempt to disclose, or use or attempt to use, information in the system in violation of this section. Any person who violates this section is guilty of a class C felony.

(e) The designated state agency shall purge or cause to be purged from the central repository system, no later than three years after the date a patient's prescription data are made available to the designated state agency, the identification number of the patient, unless the information is part of an active investigation."

SECTION 3. Chapter 329, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§329- Controlled substance registration revolving fund; established.** (a) There is established within the state treasury the controlled substance registration revolving fund. The fund shall be expended at the discretion of the director of public safety for the purpose of:

- (1) Offsetting the cost of the electronic prescription accountability system and the registration and control of the manufacture, distribution, prescription, and dispensation of controlled substances within the State; and

- (2) Funding positions authorized by the legislature by law.

(b) The fund shall consist of all moneys derived from fees collected pursuant to section 329-31 and legislative appropriations. All fees collected pursuant to section 329-31 shall be deposited in the controlled substance registration revolving fund."

SECTION 4. Section 329-1, Hawaii Revised Statutes, is amended by adding eight new definitions to be appropriately inserted and to read as follows:

"Administrator" means the administrator of the narcotics enforcement division of the department of public safety.

"Central repository" means a central repository established under section 329-B.

"Department" means the department of public safety.

"Designated state agency" means the narcotics enforcement division, department of public safety.

"Drug Enforcement Administration registration number" means the practitioner's Drug Enforcement Administration controlled substance registration number.

"Exception report" means an output of data indicating schedule II controlled substances dispensation that is outside expected norms for a practitioner

practicing a particular specialty or field of health care, for a dispenser doing business in a particular location, or for a patient.

"Identification number" means, with respect to a patient:

- (1) The unique, valid driver's license number of the patient, followed by the two-digit United States Postal Service code for the state issuing the driver's license or, if the patient is a foreign patient, the patient's passport number. If the patient does not have a driver's license, the "identification number" means the patient's social security number, followed by the patient's state of residency code. If the patient is less than eighteen years old and has no such identification, the identification number means the unique number contained on the valid driver's license of the patient's parent or guardian; or
- (2) If the controlled substance is obtained for an animal, the unique number described in paragraph (1) of the animal's owner.

"System" means an electronic prescription accountability system as described in part ."

SECTION 5. There is appropriated out of the controlled substance registration revolving fund established in section 3 the sum of \$170,000 or so much thereof as may be necessary for fiscal year 1996-1997 to provide for two full-time equivalent (2.00 FTE) investigator V positions and other current expenses to carry out the purposes of this Act. The sum appropriated shall be expended by the department of public safety.

SECTION 6. In codifying the new part added to chapter 329, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the designation of the new sections in this Act.

SECTION 7. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect upon its approval; provided that section 5 shall take effect on July 1, 1996.

(Approved June 18, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 269**

H.B. NO. 2642

A Bill for an Act Relating to the Public Employees' Health Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 87-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The fund shall be used for the purpose of providing employee-beneficiaries and dependent-beneficiaries with a health benefits plan and a long-term care benefits plan; provided that the fund, with the exception of rate credits or reimbursements from any carrier or self-insured plan or any earning or interest derived therefrom, may be used for other expenses necessary to effectuate these purposes[; and provided further that]. Notwithstanding any law to the contrary, any rate credit or reimbursement from any carrier or self-insured plan or any earning or interest

derived therefrom shall be returned to the State or the county for deposit into the appropriate general fund [if the moneys are returned from a plan that provides health benefits to retirees or the surviving spouses of deceased retirees or employees killed in the performance of their duty whose coverage is financed in whole or in part by the State or by a county].”

SECTION 2. Section 87-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This section shall apply to state and county contributions to the fund for employees specified in section 87-1(5)(A)(v), except those hired after [July 1,] June 30, 1996, under section 87-4.6, who retire after June 30, 1984, with fewer than ten years of credited service, excluding sick leave.”

SECTION 3. Section 87-4.6, Hawaii Revised Statutes, is amended to read as follows:

**“[~~§~~87-4.6] State and county contributions to fund; employees hired after [July 1,] June 30, 1996, and retired with fewer than twenty-five years of service.** (a) This section shall apply to state and county contributions to the fund for employees who were hired after [July 1,] June 30, 1996, and who retire with fewer than twenty-five years of credited service, excluding sick leave[.]; provided that this section shall not apply if an employee is hired prior to July 1, 1996, and transfers employment after June 30, 1996. For purposes of this section “transfer” means to leave state or county employment and return to state or county employment within seven calendar days.

(b) For purposes of this section, if an employee leaves state or county employment and returns to state or county employment after June 30, 1996, when the employee retires, the employee’s years of service shall be computed in the same manner as set forth in chapter 88.

[~~(b)~~] (c) The State, through the department of budget and finance and the several counties through their respective departments of finance, shall pay to the fund a monthly contribution equal to one-half of the retired employee’s monthly medicare or nonmedicare premium for the following benefits for retired employees with ten or more years but fewer than fifteen years of service; [and] seventy-five per cent of the retired employee’s monthly medicare or nonmedicare premium for the following benefits for retired employees with at least fifteen but fewer than twenty-five years of service:

- (1) For hospital, medical, and surgical benefits of a health benefits plan for each of their respective employee-beneficiaries or their respective employee-beneficiaries and their dependent-beneficiaries enrolled under this section;
- (2) For prescription drug benefits of a health benefits plan for each of their respective employee-beneficiaries or their respective employee-beneficiaries and their dependent-beneficiaries enrolled under this section;
- (3) For vision care benefits of a health benefits plan for each of their respective employee-beneficiaries or their respective employee-beneficiaries and their dependent-beneficiaries enrolled under this section; and
- (4) For adult dental benefits of a health benefits plan for each of their respective employee-beneficiaries or their respective employee-beneficiaries and their spouses enrolled under this section.

If both husband and wife are employee-beneficiaries, the total contribution by the State or the appropriate county, after an employee's retirement pursuant to this section, shall not exceed the monthly contribution of a family plan for both of them.

[(c)] (d) The State, through the department of budget and finance and the several counties through their respective departments of finance, after an employee's retirement pursuant to this section, shall pay to the fund a monthly contribution equal to the total monthly premium for each child who has not attained the age of nineteen of all employee-beneficiaries who are enrolled in the fund's dental plan for children under this section.

[(d)] (e) The State, through the department of budget and finance and the several counties through their respective departments of finance, shall pay to the fund a monthly contribution equal to the total monthly premium for each retired employee enrolled in the fund's group life insurance benefits plan under this section.

[(e)] (f) For the purpose of this section, the retired employee's monthly medicare and nonmedicare premiums for the hospital, medical, and surgical plan, the prescription drug plan, the vision care plan, and the adult dental plan shall be established annually by the board and shall be equal to the retired employee's medicare and nonmedicare premiums for the hospital, medical, and surgical plan, the prescription drug plan, the vision care plan, and the adult dental plan contracted by the fund with the largest enrollments.

[(f)] (g) The State, through the department of budget and finance and the several counties through their respective departments of finance, shall advance the amount of their respective employee-beneficiaries' contributions to the fund on or before the first day of each month.

[(g)] (h) Contributions made by the State or the several counties shall not be considered as wages or salary of an employee-beneficiary, and no employee-beneficiary shall have any vested right in or be entitled to receive any part of any contribution made to the fund."

SECTION 4. Section 87-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding any other law to the contrary:

- (1) The beneficiary of an employee who is killed in the performance of duty;
- (2) An employee-beneficiary who retired after June 30, 1984, due to a disability as defined in sections 88-77, 88-79, and 88-285;
- (3) An employee-beneficiary who retired before July 1, 1984;
- (4) An employee-beneficiary who:
  - (A) Was hired before July 1, 1996;
  - (B) Retired after June 30, 1984; and
  - (C) Who had ten years or more of credited service, excluding sick leave;
 and
- (5) An employee-beneficiary who was hired after [July 1,] June 30, 1996, and who [had] retired with twenty-five or more years of credited service, excluding sick leave;

or upon death their beneficiary, including employees who retired prior to the establishing of the fund and their beneficiaries, or the beneficiary of any employee-beneficiary, as described in section 87-1(6) shall not be required to make any contribution to the fund. The monthly contribution of the persons identified in this subsection shall be financed by the State through the department of budget and

finance and the several counties through their respective departments of finance for each of their respective employee-beneficiaries.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect on June 30, 1996.

(Approved June 18, 1996.)

ACT 270

H.B. NO. 2726

A Bill for an Act Relating to the Auditor.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 23, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§23- Confidentiality.** The auditor shall not be required to disclose any working papers. For the purposes of this section, “working papers” means the notes, internal memoranda, and records of work performed by the auditor on audits and other investigations undertaken pursuant to this chapter, including any and all project evidence collected and developed by the auditor.”

SECTION 2. Section 23-51, Hawaii Revised Statutes, is amended to read as follows:

“**§23-51 Proposed mandatory health insurance coverage; impact assessment report.** Before any legislative measure that mandates health insurance coverage for specific health services, specific diseases, or [for] certain providers of health care services as part of individual or group health insurance policies, can be considered, there shall be concurrent resolutions passed requesting the [legislative] auditor to prepare and submit to the legislature a report that assesses both the social and financial effects of the proposed mandated coverage. The concurrent resolutions shall designate a specific legislative bill that:

- (1) Has been introduced in the legislature; and
- (2) Includes, at a minimum, information identifying the:
  - (A) Specific health service, disease, or provider that would be covered;
  - (B) Extent of the coverage;
  - (C) Target groups that would be covered;
  - (D) Limits on utilization, if any; and
  - (E) Standards of care.

For purposes of this part, mandated health insurance coverage shall not include mandated optionals.”

SECTION 3. Section 26H-6, Hawaii Revised Statutes, is amended to read as follows:

“**§26H-6 New regulatory measures.** New regulatory measures being considered for enactment [which] that, if enacted, would subject unregulated professions and vocations to licensing or other regulatory controls shall be referred to the



[legislative] auditor for analysis. Referral shall be by concurrent resolution that identifies a specific legislative bill to be analyzed. The analysis required by this section shall set forth the probable effects of the proposed regulatory measure and assess whether its enactment is consistent with the policies set forth in section 26H-2. The analysis also shall [also] assess alternative forms of regulation. The [legislative] auditor shall submit each report of analysis to the legislature.”

SECTION 4. Section 28-8.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No department of the State other than the attorney general may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply to the employment or retention of attorneys:

- (1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;
- (2) By any court or judicial or legislative office of the State;
- (3) By the legislative reference bureau;
- (4) By any compilation commission that may be constituted from time to time;
- (5) By the real estate commission for any action involving the real estate recovery fund;
- (6) By the contractors license board for any action involving the contractors recovery fund;
- (7) By the trustees for any action involving the travel agency recovery fund;
- (8) By the office of Hawaiian affairs;
- (9) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485;
- (10) As grand jury counsel;
- (11) By the Hawaiian home lands trust individual claims review panel; [or]
- (12) By the auditor; or
- [(12)] (13) By a department, in the event the attorney general, for reasons deemed by the attorney general good and sufficient, declines to employ or retain an attorney for a department; provided that the governor thereupon waives the provision of this section.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Going Out of Business Sales.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that preventing fraudulent going out of business sales is in the interest of protecting Hawaii's consumers from buying low quality goods under the pretext that a company is going out of business or otherwise must sell their goods immediately due to fire damage and other such instances. Act 98, Session Laws of Hawaii (SLH) 1994, was enacted to ensure that fraudulent sales are prevented. The legislature finds that Act 98 has been effective in halting the onslaught of going out of business and like sales in Hawaii.

The purpose of this Act is to repeal the sunset clause on Act 98, to provide time limits on such sales, and to require a business person to post notice of a regulated sale when either (rather than both) of the following conditions are met:

- (1) There are one hundred or more items in the inventory, each costing \$100 or more; or
- (2) Advertising having a list or fair market value of \$10,000 or more has been placed.

SECTION 2. Act 98, Session Laws of Hawaii 1994, section 1, is amended:

1. By adding a new section to the new chapter to read:

"§ -4 Time limit. No person shall advertise merchandise for sale as a going out of business sale for a period in excess of sixty days nor advertise more than one going out of business sale in three-hundred-sixty days. The three-hundred-sixty-day period shall commence on the first day of the sale."

2. By amending section -2 of the new chapter to read:

**"§ -2 Insurance, salvage, removal, going out of business, creditor's, and other special sales; sale of damaged goods; notice required; exceptions.** No person shall directly or indirectly advertise or cause to be advertised, represent or cause to be represented, or hold out to the public in any manner that any sale of goods is an insurance, salvage, removal, going out of business, insolvent's, assignee's, or creditor's sale of goods, or that it is a sale of goods which have been damaged by fire, smoke, water, or otherwise, without first posting a notice as provided in this chapter, if that person:

- (1) Has inventory which includes one hundred or more items, each costing \$100 or more; [and] or
- (2) Has placed advertising having a list or fair market value of \$10,000 or more.

This section shall not apply to any sales made under the direction of any court or trustee in bankruptcy, or to any person acting under the direction and supervision of state or federal courts in the course of their official duties. This section shall not apply to any sales by a person regularly engaged in insurance or salvage of goods, or sale of goods which have been damaged by fire, smoke, water, or otherwise, who acquired the goods for the account of others as a result of fire or other casualty."

3. By renumbering and amending section -4 of the new chapter to read:

"[§ -4] § -5 Violation; penalties. [Any violations of this chapter shall constitute unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as prescribed in section 480-2 and subject to the civil penalty prescribed in section 480-3.1] Any person who violates or attempts to violate any provision of this chapter shall be deemed to have engaged in an unfair

or deceptive act or practice in the conduct of trade or commerce within the meaning of section 480-2.”

SECTION 3. Act 98, Session Laws of Hawaii 1994, is amended by amending section 2 to read as follows:

“SECTION 2. This Act shall take effect upon its approval[; provided that this Act shall be repealed three years from the date of its approval].”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 272

H.B. NO. 3208

A Bill for an Act Relating to Small Businesses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that small businesses in Hawaii are vital to the State’s economic development and growth and help the State to maintain a stable and diversified economy. The legislature finds, however, that small businesses in the State are over-regulated by state government. Many state laws, although seemingly equitable on their face, often impose intolerable burdens on small businesses. Among the laws hampering small businesses are numerous state and county taxes; mandated benefits, including workers’ compensation, health care, and motor vehicle insurance benefits; unemployment insurance costs; payroll costs; lease costs; licensing and permit fees; and reporting requirements.

The purpose of this Act is to establish a one-year blue ribbon task force on small business within the department of business, economic development, and tourism to review:

- (1) All existing state administrative rules relating to small businesses;
- (2) All state-originated proposed rules and proposed amendments to existing rules that affect small businesses prior to their adoption; and
- (3) All state laws that act as barriers to the formation, operation, and expansion of small businesses in the State.

SECTION 2. There is established a blue ribbon task force on small business within the department of business, economic development, and tourism for administrative purposes, to review:

- (1) All existing state administrative rules relating to small businesses as identified by the department of business, economic development, and tourism;
- (2) All state-originated proposed rules and proposed amendments to existing rules that affect small businesses prior to their adoption, concurrently with the department of business, economic development, and tourism; and
- (3) All state laws that act as barriers to the formation, operation, and expansion of small businesses in the State.

SECTION 3. The task force shall include members, who shall be appointed by the governor from a list to be submitted by the Hawaii Congress on Small Business.

SECTION 4. The blue ribbon task force on small business shall submit:

- (1) A preliminary report of its findings and recommendations to the governor and the legislature no later than twenty days prior to the convening of the regular session of 1997; and
- (2) A final report of its findings and recommendations to the governor and the legislature no later than twenty days prior to the convening of the regular session of 1998.

SECTION 5. This Act shall take effect on July 1, 1996, and shall be repealed on June 30, 1998.

(Approved June 18, 1996.)

## ACT 273

H.B. NO. 3554

A Bill for an Act Relating to Automated Tax Systems Acquisition by the Department of Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 218, Session Laws of Hawaii 1995, is amended by amending section 89 to read as follows:

“SECTION 89. Provided that of the general fund appropriation for supporting services-revenue collection (TAX 107), the sum of [\$2,540,046] \$1,842,955 for fiscal [year] years 1995-1996 and 1996-1997 shall be used only for the purposes required for the redesign and acquisition of the new integrated tax information management system; provided further that any unexpended revenues shall be lapsed to the state general fund; and provided further that the department of taxation shall submit a progress and expenditure report to the legislature no later than twenty days prior to the convening of the 1996 and 1997 regular sessions.”

SECTION 2. The department of taxation may enter into performance-based contracts to acquire automated tax systems, including computer hardware and software, for the administration of taxes.

For the purposes of this Act:

“Department” means the department of taxation.

“Performance-based contract” means a contract under which compensation to the vendor shall be computed according to performance standards established by the department. Any performance-based contract entered into by the department for such purpose shall provide:

- (1) For the payment of fees based on a contractually specified amount of the increase in the amount of taxes, interests, and penalties collected and attributable to the implementation of automated tax systems; or
- (2) For the payment of fees on a fixed-fee contract basis to be paid from the increase in the amount of taxes, interests, and penalties collected and attributable to the implementation of automated tax systems.

The State shall receive title to the automated tax systems upon full payment to the vendor.

SECTION 3. Notwithstanding any other law to the contrary, the department shall award the contract pursuant to the following procedures:

- (1) The department shall issue a public request for proposals, as provided in section 103D-303, Hawaii Revised Statutes;
- (2) The financial arrangements may include third-party financing, if warranted, and other factors determined by the department to be relevant and appropriate;
- (3) The department thereafter, may negotiate and enter into a performance-based contract with the vendor or vendors whose proposal is selected as the most qualified based on criteria established by the department;
- (4) The term of the performance-based contract entered into pursuant to this section shall not exceed ten years; and
- (5) The comptroller, in consultation with the director of finance, shall review and approve the financing arrangement agreed to by the department; provided that the comptroller and the director of finance shall not approve any financing arrangement if it will not result in increased tax collections and savings of at least \$5,000,000 over the life of the performance-based contract.

Any financing arrangement proposed by the department shall be subject to review and approval by the comptroller in consultation with the director of finance.

SECTION 4. The director of taxation shall report to the legislature no later than twenty days prior to the convening of every regular session with respect to the status of the performance-based contract and shall provide an accounting of all moneys appropriated. The report shall include:

- (1) Detailed information on the costs and benefits of implementing the automated tax systems;
- (2) The amount of increased tax, interest, and penalties collected that is attributable to the automated tax systems; and
- (3) The amount paid to the vendor or vendors contracted under section 2.

The report shall include information from the preceding fiscal year and shall continue until two complete fiscal years have elapsed following full implementation of the automated tax systems.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 274

H.B. NO. 3785

A Bill for an Act Relating to Health Care.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10 to be appropriately designated and to read as follows:

**“§431:10- Disclosure of health care coverage and benefits.** In order to ensure that all individuals understand their health care options and are able to make informed decisions, all insurers shall provide current and prospective insureds with

written disclosure of coverages and benefits, including information on coverage principles and any exclusions or restrictions on coverage.

The information provided shall be current, understandable, and available prior to the issuance of a policy, and upon request after the policy has been issued.”

SECTION 2. Chapter 432, Hawaii Revised Statutes, is amended by adding a new section to article 1 to be appropriately designated and to read as follows:

**“§432:1- Disclosure of health care coverage and benefits.** In order to ensure that all individuals understand their health care options and are able to make informed decisions, all mutual benefit societies shall provide current and prospective members with written disclosure of coverages and benefits, including information on coverage principles and any exclusions or restrictions on coverage.

The information provided shall be current, understandable, and available prior to membership, and upon request after membership.”

SECTION 3. Chapter 432D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§432D- Disclosure of health care coverage and benefits.** In order to ensure that all individuals understand their health care options and are able to make informed decisions, all health maintenance organizations shall provide current and prospective enrollees with written disclosure of coverages and benefits, including information on coverage principles and any exclusions or restrictions on coverage.

The information provided shall be current, understandable, and available prior to enrollment, and upon request after enrollment.”

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 275**

H.B. NO. 3822

A Bill for an Act Relating to the Statewide Traffic Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 291C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§291C- Disclosure of traffic accident reports.** (a) Any traffic accident report required under this chapter shall be made without prejudice to the person required to report information concerning the accident and shall be for the confidential use of the police department, except that the department shall, upon request, disclose such record, to any person directly concerned in the traffic accident or having a proper interest therein, including:

- (1) The driver or drivers involved, or the employer, parent, or legal guardian thereof;
- (2) The authorized representative of any person involved in the accident;

- (3) Any person injured in the accident;
- (4) The owners of vehicles or property damaged in the accident;
- (5) Any law enforcement agency; and
- (6) Any court of competent jurisdiction.

(b) Any person who may sue because of death resulting from any such accident shall be deemed a party directly concerned.

(c) In the event of a conflict between this section and any other law, including sections 286-171 and 286-172 and chapter 92F, this section shall control.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

Note

- 1. Edited pursuant to HRS §23G-16.5.

ACT 276

H.B. NO. 3954

A Bill for an Act Relating to the University of Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 304-34, Hawaii Revised Statutes, is amended to read as follows:

“**§304-34 Center for labor education and research.** [The center for labor-management education] There is established at the University of Hawaii, [Manoa campus, is re-designated and established as] West Oahu campus, the center for labor education and research. The center shall:

- (1) [provide] Provide credit and non-credit labor [education instruction,] studies courses, and labor-related research and educational services for workers and their organizations;
- (2) [provide] Provide labor-related education to the public;
- (3) [advise] Advise and assist in the development and implementation of labor-related instructional programs, courses, and activities for use within the department of education, including teacher preparation therefor;
- (4) [advise and assist in the development and implementation of] Develop and implement a labor studies degree program or programs in the University of Hawaii system; and
- (5) [be] Serve as the clearinghouse for labor education matters in the State.

The center shall be located in and be a part of the [college of continuing education and community services of the University of Hawaii, Manoa campus] University of Hawaii, West Oahu. The affairs and operations of the center shall be administered by a director appointed by and responsible to the [dean of such college. The center shall utilize the smallest practicable permanent staff for its direction and operation and it] chancellor of the University of Hawaii, West Oahu. The center shall draw on existing personnel within the state government insofar as possible for necessary supplementation. Where [bonafide demands] bona fide demand for programs and services [exceed] exceeds the capabilities of the permanent staff as supplemented, additional personnel resources may be acquired on a contract basis

without regard to chapters 76 and 77. Permanent staff shall be covered by chapters 76 and 77, or section 304-13, as may be appropriate.

The center shall receive the full cooperation of all state agencies in the use of staff members, facilities, and other resources necessary to accomplish the purposes of this part."

SECTION 2. Section 304-35, Hawaii Revised Statutes, is amended to read as follows:

**"§304-35 Functions and programs.** (a) In consultation with the labor education advisory council, the center shall:

- (1) [develop a systematic, long-range labor education program for implementation during fiscal year 1976-77;
- (2) coordinate,] Coordinate, arrange for, or conduct evaluation of existing center programs of instruction for refinement, develop new courses of instruction, and plan their implementation on a continuing basis;
- [(3) coordinate,] (2) Coordinate, arrange for, or conduct instructional programs including classes, courses, workshops, seminars, and research studies or projects;
- [(4) coordinate,] (3) Coordinate, arrange for, or provide technical assistance to trade unions to improve or implement labor education programs within their organizations;
- [(5) prepare] (4) Prepare and disseminate educational information and publications on various subjects of concern and interest to workers and their organizations;
- (5) Develop or acquire the means necessary to offer credit and non-credit labor studies programs via distance education throughout the State;
- (6) [develop] Develop or acquire and promote the dissemination of labor-related information and programs through the various public media (radio, [TV,] television, newspapers, public and private organizations, clubs, etc.); and
- (7) [coordinate,] Coordinate, arrange for, or conduct credit and non-credit teacher preparation classes to enable relevant and reliable department of education instruction in labor-related educational courses, programs and activities.

(b) Notwithstanding chapters 42D, 103, and 103D, the director of the center may limit the center's contracts for any publication and stationery work that may be necessary to accomplish the aims described in subsection (a) to contractors whose employees are represented by a representative duly elected under applicable federal or state labor laws for collective bargaining purposes."

SECTION 3. Section 304-36, Hawaii Revised Statutes, is amended to read as follows:

**"§304-36 Labor education advisory council.** There is established a labor education advisory council, consisting of not more than fifteen members, broadly representative of the trade union movement in the State, who shall be appointed by the president of the university. The council shall be advisory to the [dean of the college of continuing education and community service] chancellor on all activities and programs of the center and shall assist the [dean] chancellor in the assessment and evaluation of program needs for implementation. Members of the council shall designate its chairperson and shall serve without compensation; provided, however, that such actual traveling and other expenses incurred in the performance of their duties shall be advanced or reimbursed."



SECTION 4. Section 304-37, Hawaii Revised Statutes, is amended to read as follows:

**“§304-37 Revolving fund.** There shall be established a revolving fund to be known as the center for labor education and research revolving fund, for use by the director of the center with the approval of the [dean of the college of continuing education and community services] chancellor or vice chancellor in carrying out the purposes of the center. All fees, charges, and other moneys collected in conjunction with the operations of the center shall be deposited in the revolving fund. Such amounts shall be expended from the fund by the director of the center as may be necessary to defray the cost of operating the center, excluding compensation of the permanent staff, but including contractual obligation, rentals, and such other program costs as approved by the [dean] chancellor or vice chancellor.”

SECTION 5. The current staffing and funding of the center shall be transferred to the University of Hawaii, West Oahu.

SECTION 6. All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

Any officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or employee possesses the minimum qualifications for the position to which transferred or appointed.

If an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position of which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

SECTION 7. All current appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the University of Hawaii relating to the functions transferred to the center for labor education and research shall be transferred with the functions to which they relate.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 1996.

(Approved June 18, 1996.)

A Bill for an Act Relating to the Housing Finance and Development Corporation.  
*Be It Enacted by the Legislature of the State of Hawaii:*

## PART I.

SECTION 1. Section 201E-221, Hawaii Revised Statutes, is amended to read as follows:

**“§201E-221 Real property; restrictions on transfer; waiver of restrictions.** (a) The following restrictions shall apply to the transfer of real property developed and sold under this chapter, whether in fee simple or leasehold:

- (1) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, the corporation shall have the first option to purchase the real property at a price that shall not exceed the sum of:
  - (A) The original cost to the purchaser, as defined in rules adopted by the corporation;
  - (B) The cost of any improvements added by the purchaser, as defined in rules adopted by the corporation; and
  - (C) Simple interest on the original cost and capital improvements to the purchaser at the rate of one per cent a year.
- (2) The corporation may purchase the real property either:

- [(i)] (A) By conveyance free and clear of all mortgages and liens; or
- [(ii)] (B) By conveyance subject to existing mortgages and liens.

If the real property is conveyed in the manner provided in [clause (i),] subparagraph (A), it shall be conveyed to the corporation only after all mortgages and liens are released. If the real property is conveyed in the manner provided in [clause (ii),] subparagraph (B), the corporation shall [assume the seller's obligation on] acquire the property subject to any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller; and any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing.

The corporation's interest created by [the provisions of] this subsection shall constitute a lien on the real property and shall be superior to any other mortgage or lien except for [(1) any]:

- (i) Any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller[, (2) any];
- (ii) Any mortgage insured or held by a federal housing agency[.]; and [(3) any]
- (iii) Any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing. The amount paid by the corporation to the seller shall be the difference, if any, between the purchase price determined by [the provisions stated in subsection (a)(1)(A)] paragraph (1)(A) to (C), and the total of the outstanding

principal balances of the mortgages and liens assumed by the corporation.

[(2)] (3) A purchaser may refinance real property developed and sold under this chapter provided that the purchaser shall not refinance the real property, within ten years from the date of purchase, for an amount in excess of the purchase price as determined by [the provisions of subsection (a)(1)(A)] paragraph (1)(A) to (C).

[(3)] (4) After the end of the tenth year from the date of purchase, or execution of an agreement of sale, the purchaser may sell the real property and sell or assign the property free from any price restrictions; provided that the purchaser shall be required to pay to the corporation the sum of:

(A) The balance of any mortgage note, agreement of sale, or other amount owing to the corporation;

(B) Any subsidy or deferred sales price made by the corporation in the acquisition, development, construction, and sale of the real property, and any other amount expended by the corporation not counted as cost under section 201E-220 but charged to the real property by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs;

(C) Interest on the subsidy or deferred sales price, if applicable, and any other amount expended at the rate of seven per cent a year computed as to the subsidy or deferred sales price, if applicable, from the date of purchase, or execution of the agreement of sale, and as to any amount expended, from the date of expenditure; provided that the computed interest shall not extend beyond thirty years from the date of purchase, or execution of the agreement of sale, of the real property; and provided further that if any proposed sale or transfer will not generate an amount sufficient to pay the corporation the sum as computed under this paragraph, the corporation shall have the first option to purchase the real property at a price which shall not exceed the sum as computed under [paragraph] paragraphs (1); and (2); and

(D) The corporation's share of appreciation in the real property as determined under rules adopted pursuant to chapter 91 when applicable.

[(4)] (5) Notwithstanding any provision above to the contrary, pursuant to rules adopted by the corporation, the subsidy or deferred sales price described in [subsection (a)(3)(B)] paragraph (4)(B) and any interest accrued pursuant to [subsection (a)(3)(C)] paragraph (4)(C) may be paid, in part or in full, at any time.

(b) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, and if the corporation does not exercise the option to purchase the real property as provided in subsection (a), then the corporation shall require the purchaser to sell the real property to a "qualified resident" as defined in section 201E-2, and upon the terms that preserve the intent of sections 201E-221, 201E-222, and 201E-223, and in accordance with rules adopted by the corporation.

[(b)] (c) The corporation may waive the restrictions prescribed in subsection (a) or (b) if:

(1) The purchaser wishes to transfer title to the real property by devise or through the laws of descent to a family member who would otherwise qualify under rules established by the corporation; or

- (2) The sale or transfer of the real property would be at a price and upon terms that preserve the intent of this section without the necessity of the State repurchasing the real property; provided that, in this case, the purchaser shall sell the unit or lot and sell or assign the property to a person who is a "qualified resident" as defined in section 201E-2; and provided further that the purchaser shall pay to the corporation its share of appreciation in the unit as determined in rules adopted pursuant to chapter 91 when applicable.

[(c)] (d) The corporation may release the restrictions prescribed in subsection (a) or (b) if the real property is financed under a federally subsidized mortgage program and the restrictions would jeopardize the federal government's ability to recapture any interest credit subsidies provided to the homeowner.

[(d)] (e) The restrictions prescribed in sections 201E-221 to 201E-224 shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgage holder or other party becomes the owner of the real property pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced; or when a mortgage is assigned to a federal housing agency. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering real property or leasehold interest encumbered by the first option to purchase in favor of the corporation, prior to commencing mortgage foreclosure proceedings, shall notify the corporation in writing of (1) any default of the mortgagor under the mortgage within ninety days after the occurrence of the default, and (2) any intention of the mortgagee to foreclose the mortgage under chapter 667; provided that the mortgagee's failure to provide [such] written notice to the corporation shall not affect such holder's rights under the mortgage. The corporation shall be a party to any foreclosure action, and shall be entitled to all proceeds remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record; provided that the person in default shall be entitled to an amount which shall not exceed the sum of amounts determined pursuant to subsection (a)(1)(B) and (C).

[(e)] (f) The provisions of this section shall be incorporated in any deed, lease, agreement of sale, or any other instrument of conveyance issued by the corporation. In any sale by the corporation of real property for which a subsidy or deferred sales price was made by the corporation, the amount of the subsidy or deferred sales price described in subsection [(a)(3)(B),] (a)(4)(B), a description of the cost items [which] that constitute the subsidy or deferred sales price, and the conditions of the subsidy or deferred sales price shall be clearly stated at the beginning of the contract document issued by the corporation.

[(f)] (g) Subsections (a), (b), (c), (d), (e), and (f) need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units.

[(g)] (h) The corporation is authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal laws or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants."

SECTION 2. Section 201E-222, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) From time to time the corporation may submit a verification of owner-occupancy form to the purchaser. Failure to respond to the verification in a timely manner or violation of subsection (a) shall be sufficient reason for the corporation, at

its option, to purchase the unit as provided in section 201E-221(a)(1), (2), or [(3),] (4), as applicable.”

## PART II.

SECTION 3. Chapter 201E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§201E-     **Issuance of bonds for the development of infrastructure.** The corporation, pursuant to and in accordance with part II, subpart A, is hereby authorized to issue bonds for the purpose of financing the development of infrastructure on land owned by the corporation.”

SECTION 4. Section 201E-50, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The corporation may issue such types of bonds as it may determine, including bonds on which the principal and interest are payable:

- (1) Exclusively from the income and revenues of the housing project financed with the proceeds of the bonds, or with the proceeds together with a grant from the federal government in aid of the project;
- (2) Exclusively from the income and revenues of certain designated housing projects whether or not they were financed in whole or in part with the proceeds of the bonds; [or]
- (3) From its revenues generally[.]; or
- (4) With respect only to bonds issued pursuant to section 201E-     , exclusively from the income and revenues derived from the sale of land or from both land and improvements thereon, serviced by infrastructure financed from the proceeds of the bonds.”

SECTION 5. Revenue bonds are hereby authorized to be issued by the housing finance and development corporation pursuant to part III, chapter 39, Hawaii Revised Statutes, and subpart B of part II of chapter 201E, Hawaii Revised Statutes, in an aggregate principal amount not to exceed \$125,000,000, at such times and in such amounts as it deems advisable for the purpose of financing the development of infrastructure as provided under section 201E-     , Hawaii Revised Statutes.

SECTION 6. In the event bonds are issued pursuant to section 201E-     and this Act for the purposes of financing housing or housing projects consisting of the development of infrastructure on land owned by the housing finance and development corporation which includes land proposed for large lot subdivision as a five hundred acre parcel and designated as Lot 10077 in Land Court Application No. 1069, the housing finance and development corporation shall provide in the proceedings authorizing such bonds that at such time as all of such bonds shall have been paid or irrevocable provision for the payment thereof has been made, the corporation shall deposit or cause to be deposited an amount equal to the allocated share of any income or revenues derived from the sale of the aforesaid five hundred acre parcel or from both the aforesaid five hundred acre parcel and improvements thereon in excess of the amount required to pay or provide for the payment of bonds attributable to the aforesaid five hundred acre parcel into the state treasury for credit to the University of Hawaii-West Oahu special fund created and established by H.B. No. 1716,<sup>1</sup> in its final form, for use as are all other moneys in such special fund. All other

income or revenue derived from the sale of the aforesaid land or from both the aforesaid land and improvements shall be applied as provided by law.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 8. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

#### **Notes**

1. Act 294.

2. Edited pursuant to HRS §23G-16.5.

## **ACT 278**

**H.B. NO. 3976**

**A Bill for an Act Relating to the Issuance of a Special Purpose Revenue Bond to Assist an Industrial Enterprise.**

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that although solar electric photovoltaic power systems have demonstrated their value as a clean, safe, and economical alternative in selected applications to petroleum and conventional utility service, consumers in Hawaii continue to depend almost entirely upon imported petroleum-based fuels and conventional utility power line extensions to fulfill their electrical energy requirements. Large regions of the State remain unelectrified or are served by weak electrical systems. The legislature further finds that Hawaii has developed a stable and growing solar industry to provide photovoltaic systems. Provided with the necessary financial assistance afforded through low interest long-term financing, industry expansion including the construction of new manufacturing facilities will occur, producing significant direct and indirect benefits to the state economy. For the foregoing reasons, the legislature finds and declares that the issuance of special purpose revenue bonds and refunding special purpose revenue bonds under this Act is in the public interest and is beneficial to the public's health, safety, and general welfare.

PowerLight Corporation proposes that all public and private parties and organizations involved cooperate in expanding the use of solar electric photovoltaic systems, which can be generally categorized as grid-connected or off-grid systems. The legislature finds that PowerLight Corporation is an industrial enterprise meeting the qualifications for special purpose revenue bond assistance under Article VII, section 12, of the Hawaii State Constitution and part V, chapter 39A, Hawaii Revised Statutes. The special purpose revenue bonds authorized under this Act will provide low interest rate bond financing to assist PowerLight corporation establish grid-connected and off-grid solar electric photovoltaic systems in Hawaii county, Maui county, and Kauai county.

SECTION 2. Pursuant to Article VII, section 12, of the Hawaii State Constitution and part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in one or more series in a total amount not to exceed \$12,500,000, to assist PowerLight Corporation, or a partnership in which PowerLight Corporation is a general partner, establish grid-connected and off-grid solar electric photovoltaic systems in Hawaii county, Maui county, and Kauai county. The

legislature finds and determines that the activity and facilities of PowerLight Corporation constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to an industrial enterprise.

SECTION 3. The department of budget and finance shall submit an annual report to the legislature of the progress made under this Act in reducing the financial costs of the provisions of grid-connected and off-grid solar electric photovoltaic systems in Hawaii county, Maui county, and Kauai county. The report shall include:

- (1) The cost of the bonds at the time of issuance as compared to the cost of the undertaking if the undertaking was financed through other means;
- (2) The estimated benefits derived from the use of the special purpose revenue bonds; and
- (3) A description of the undertaking to be funded by the special purpose revenue bonds.

SECTION 4. The department of budget and finance is authorized to issue from time to time, refunding special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2, and any refunding special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this Act.

SECTION 5. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the authority to issue special purpose revenue bonds and refunding special purpose revenue bonds to assist industrial enterprises serving the general public.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 1999.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 279

S.B. NO. 107

A Bill for an Act Relating to Collective Bargaining.

*Be It Enacted by the Legislature of the State of Hawaii:*

### PART I

SECTION 1. There are appropriated or authorized from the source of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the fiscal biennium 1995-97 all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit 11:

	<u>FY 1995-96</u>	<u>FY 1996-97</u>
Special Funds	\$ 130,265	\$ 406,713

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

## PART II

SECTION 3. There are appropriated or authorized from the source of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for the fiscal biennium 1995-97, the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 1995-96</u>	<u>FY 1996-97</u>
Special Funds	\$ 8,000	\$ 22,850

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

SECTION 5. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 1997, shall lapse as of that date.

SECTION 6. This Act shall take effect on July 1, 1996.

(Approved June 18, 1996.)

## ACT 280

S.B. NO. 2067

A Bill for an Act Relating to Higher Education.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 304-93, Hawaii Revised Statutes, is amended to read as follows:

**“§304-93 Repayment of loans[.]; collection. (a)** All loans made under this part shall bear interest at five per cent simple interest. Repayment of principal and interest charges shall commence nine months after graduation or after a borrower ceases to be enrolled at least half-time in a degree program and shall be paid in periodic installments within a ten-year period. The university may charge late fees and all other reasonable costs for the collection of delinquent loans. The board of regents may, upon application by the student and upon a showing of good cause, defer repayment of the loan and commencement of interest. Liability for repayment of a loan shall be canceled upon the death or permanent total disability of the borrower.

**(b)** The university may spend out of the state higher education loan fund up to two per cent of the total amount of loans outstanding for collection and administrative expenses. In accordance with chapter 103D, the university may enter into written contracts with collection agencies for the purpose of collecting delinquent



student loans. [In addition, all] All payments collected, exclusive of a collection agency's commissions, shall revert, [to] and be credited, to the loan fund.

(c) A collection agency that enters into a written contract with the University of Hawaii for the collection of delinquent student loans pursuant to subsection (b), may collect a commission from the debtor in accordance with the terms of, and up to the amounts authorized in, the written contract."

SECTION 2. Section 443B-9, Hawaii Revised Statutes, is amended to read as follows:

**"[[§443B-9 Collection, attorney's, or commission fees[.]]; exception.**

(a) A collection agency shall not collect, or attempt to collect, any collection fee or attorney's fee or commission from any debtor; provided that an attorney's fee or commission may be collected after filing of a suit against any debtor and the fee or commission shall not be in excess of twenty-five per cent of the unpaid principal balance. All attorney's fees or commissions collected by a collection agency shall be remitted to the attorney and no portion of the collection shall be retained by the collection agency.

(b) This section shall not prohibit a collection agency from collecting, or attempting to collect, from a debtor, a commission authorized under a contract with the University of Hawaii pursuant to section 304-93(b)."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 281

S.B. NO. 2090

A Bill for an Act Relating to Pesticides.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 149A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§149A- Pesticide use revolving fund; pesticide training workshops; training fee.** (a) There is established within the treasury of the State, a pesticide use revolving fund. The fund shall be administered by the department for the purposes of this section. The fund shall consist of:

- (1) Licensing and registration fees and charges collected by the department under section 149A-13(b); and
- (2) All fees collected by the department through the collection of training fees in accordance with subsection (c).

(b) Moneys in the pesticide use revolving fund shall be expended by the department to support the pesticide program's registration and licensing, certification and education, and compliance monitoring activities. The department shall also expend revolving fund moneys on the establishment of pesticide training workshops, educational programs, and other services for pesticide users such as the agricultural pest control industry, the structural pest control industry, and consumer users of pesticides, which provide pesticide instruction in areas, including but not limited to,

the collection, disposal, and recycling of pesticide containers and all other pesticide services deemed necessary by the department. Moneys from the revolving fund may be used for the purchase of services, materials, and equipment.

Moneys expended by the department from the pesticide use revolving fund for training workshops, educational programs, and other services for the agricultural pest control industry, the structural pest control industry, and consumer groups shall be done so in a manner that appropriately addresses the needs of each category of pesticide user.

(c) The department may set fees for the educational services and training provided under this section.

(d) All interest earned on the deposit or investment of the moneys in the fund shall become a part of the fund.

(e) The balance in the revolving fund shall not exceed \$250,000. All amounts in excess of the \$250,000 shall be deposited to the credit of the state general fund."

SECTION 2. Section 149A-13, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The licensee shall pay [a minimum fee of \$10] \$75 for each year, or fraction thereof, that the pesticide is licensed[, provided that the minimum annual fee for a restricted use pesticide shall be \$30.]<sup>1</sup> Licensing fees may be increased or decreased from time to time by rules and may vary according to the amount or quantity of pesticide to be sold, offered for sale, or distributed. The term of the license shall be for a period of up to three years[, beginning January 1, 1982, expiring on December 31, 1984, and on December 31 of each third year thereafter]. A license shall expire on December 31 of the third year. In case of renewal of license, a statement shall be required only with respect to information which is different from that furnished when the pesticide was licensed or last relicensed. [All fees collected shall be deposited in the general fund of the State.]"

SECTION 3. Section 149A-41, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Warning notice. Any person who violates this chapter or any rule issued under this [section] chapter may upon the first violation be issued a written warning notice citing the specific violation and necessary corrective action.

(b) Civil penalties.

- (1) In general, any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this chapter may be assessed a civil penalty by the board of not more than \$5,000 for each offense.
- (2) Any private applicator or other person not included in paragraph (1) who violates any provision of this chapter relating to the use of pesticides while on property owned or rented by that person or the person's employer, subsequent to receiving a written warning from the department or following a citation for a prior violation, may be assessed a civil penalty by the board of not more than \$1,000 for each offense. Any private applicator or other person not included in paragraph (1) who violates any provision of this chapter relating to licensing, transport, sale, distribution, or application of a pesticide for commercial purposes may be assessed a civil penalty as provided in paragraph (1).
- (3) No civil penalty shall be assessed unless the person charged shall have been given notice and an opportunity for a hearing on the specific charge in the county of the residence of the person charged. The civil

penalty and any proposed action contained in the notice of finding of violation shall become a final order unless, within twenty days of receipt of the notice, the person or persons charged make a written request for a hearing. In determining the amount of penalty, the board shall consider the appropriateness of the penalty to the size of the business of the person charged, the effect on the person's ability to continue business, and the gravity of the violation.

- (4) In case of inability to collect the civil penalty or failure of any person to pay all or such portion of the civil penalty as the board may determine, the board shall refer the matter to the attorney general, who shall recover the amount by action in the appropriate court."

SECTION 4. The board of agriculture shall prepare and submit annual reports to the legislature for the next five years on the impact of the increase in the minimum annual pesticide licensing fee to \$75 and the elimination of the two-tier pesticide licensing fee structure, including the impact on the number and types of pesticides licensed in this State, the number of new applications filed with the department of agriculture, the number of renewals of previously licensed pesticides filed with the department of agriculture, and the amounts spent for training workshops, educational programs, and other services for the agricultural pest control industry, the structural pest control industry, and consumer groups. The reports shall be submitted no later than twenty days prior to the convening of the regular sessions of 1997, 1998, 1999, 2000, and 2001.

SECTION 5. There is appropriated out of the pesticide use revolving fund the sum of \$250,000, for fiscal year 1996-1997, to be expended by the department of agriculture for the purposes of section 1 of this Act.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 7. This Act shall take effect on July 1, 1996.

(Approved June 18, 1996.)

#### Notes

1. Period should not be bracketed out.
2. Edited pursuant to HRS §23G-16.5.

## ACT 282

S.B. NO. 2278

A Bill for an Act Making an Appropriation for Agricultural Research and Development.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that agriculture is one of the State's most important industries and a vital component of the State's economic base. The legislature also finds that although sugar will continue to be one of Hawaii's primary export products, the sugar industry is downsizing to remain viable and competitive. With the continued downsizing of the sugar industry, agricultural research and development has become increasingly important for maintaining and improving current crops grown across the State and for developing new crops so that the State can take the best economic advantage of the thousands of acres of prime agricultural lands that are now available, including state lands formerly in sugarcane production.

The legislature also finds that the Hawaii Agriculture Research Center has been working with other agriculturists, landowners, and the State to develop new agricultural opportunities on these prime agricultural lands across the State. In 1996, the Hawaii Agriculture Research Center will begin a second century of conducting proven production-oriented, results-driven scientific research for the benefit of the State's agriculture industry and will continue to be a key resource in the State's efforts to strengthen and improve the agriculture industry, revitalize the economy, and maintain and create employment opportunities, especially in rural areas.

The purpose of this Act is to provide the necessary funds to assist in maintaining current minimum levels of agricultural research at the Hawaii Agriculture Research Center.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000, or so much thereof as may be necessary for fiscal year 1996-1997, for agricultural research and development to be performed by the Hawaii Agriculture Research Center; provided that no research funds for specific agricultural commodities with an annual statewide crop sales of \$10,000,000 or greater, based on the most recent statistics available for the department of agriculture, shall be expended unless matched on a dollar-for-dollar basis; and provided further that no funds for agricultural research for other agricultural commodities shall be expended unless matched on the basis of three dollars from the State for each dollar from the private sector, except that up to \$250,000 may be released unmatched for exploratory agricultural research and development, including, but not limited to, vegetable variety trials, demonstration plantings, and pest management alternatives to chemical control.

SECTION 3. The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1996.

(Approved June 18, 1996.)

## ACT 283

S.B. NO. 2485

A Bill for an Act Relating to Public Employment.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the State is faced with a severe budget shortfall of significant proportions with limited prospects of an immediate infusion of revenue to cover the deficit. The legislature believes that there now exists a compelling State interest to deal with the budgetary deficit in an expeditious and innovative manner to curtail or hold to a minimum any harmful economic impact on public employees.

State agencies already have made deep cuts in their budgets and a number of employees have been laid off or terminated. Yet further downsizing of government will be required to further reduce the deficit. Although discussed during the 1995 session, no action was taken to implement employee furloughs as a reasonable, workable, and immediate alternative to employee layoffs and terminations. The legislature believes that employee furloughs will cause the least amount of disruption on public services, and can postpone, and may even avert, further layoffs and terminations of public officers and employees. However, as employees will be

suffering reductions in salary caused by the furloughs, it is important to ensure that the rights, privileges, and benefits accruing to employees are not altered or otherwise affected by any furlough program. Accordingly, it is the purpose of this Act to preserve certain employee rights, privileges, and benefits when an employee is furloughed.

**SECTION 2. Definitions.** For the purposes of this Act:

“Department” means any department, board, commission, or agency, or other body of the State, or any county of the State, including the office of Hawaiian affairs, the judiciary, and the legislative bodies of the State and counties.

“Employee” means an employee or officer of a department.

“Employer” means the governor in the case of departments in the executive branch, the chief justice in the case of the judiciary, the president in the case of the senate, the speaker in the case of the house of representatives, the board of trustees in the case of the office of Hawaiian affairs, and the mayor in the case of a county.

“Qualified employee” means any employee or officer of a department but does not include employees whose wages or salaries are paid out of federal funds, federal receipts, revolving, or trust funds, or such other funds or receipts that are not subject to legislative appropriations.

“Furlough” means the placement of an employee temporarily and involuntarily in a nonpay and nonduty status.

**SECTION 3.** Any furlough of an employee during fiscal year 1996-1997 shall not cause or be deemed to cause:

- (1) A break in the employee’s employment;
- (2) A decrease in the employer’s contribution to the Hawaii public employees health fund;
- (3) A change in the amount of vacation or sick leave earned by the employee;
- (4) A decrease in the employee’s time in service for purposes of the employee’s pension, retirement, and deferred compensation plans; and
- (5) Any change on any right, privilege, or benefit that the employee is entitled to or would have been entitled to by law but for the furlough.

**SECTION 4.** This Act shall take effect upon its approval.

(Approved June 18, 1996.)

**ACT 284**

S.B. NO. 3011

A Bill for an Act Relating to the Development of Schools in the Villages of Kapolei.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature finds that the development of planned communities in the State have not only protected, but vastly improved the way of life for many residents of Hawaii. Providing people with a place to live that is comfortably situated in close proximity to shopping malls and workplaces reduces stress and travel time, thereby providing many people with more time to spend with their families and loved ones. As a prime example of the success a planned community can achieve, the villages of Kapolei on the island of Oahu have flourished into a fast growing and vibrant community. This enormous success and fast growth, however, also comes with growing needs. Although the villages of Kapolei have grown

substantially over the past few years, the construction of schools for the area has not kept pace with the growing population.

The purpose of this Act is to authorize the housing finance and development corporation to enter into development agreements with private developers to expedite the construction of school facilities for the villages of Kapolei.

SECTION 2. Notwithstanding any other law to the contrary, including sections 27-11 and 201E-30, Hawaii Revised Statutes, and section 4 of Act 210, Session Laws of Hawaii 1995, the housing finance and development corporation, subject to availability of funds and in consultation with the departments of accounting and general services, education, and health on the issue of the proximity of schools to surrounding environmental hazards, may enter into development agreements with private developers to expedite the construction of school facilities within the villages of Kapolei on the island of Oahu.

The housing finance and development corporation may authorize a private developer to construct school facilities and may structure the financial obligations concerning school facility construction with the private developer, in accordance with all applicable state and federal laws and in a manner that the corporation deems appropriate and most efficient for building schools for the Kapolei area.

SECTION 3. The department of education, the department of accounting and general services, the department of health, and the housing finance and development corporation shall submit a joint report to the legislature on the expedited building of schools in the villages of Kapolei no later than twenty days prior to the convening of the regular session of 1997.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

## ACT 285

S.B. NO. 3135

A Bill for an Act Relating to Budget Reductions.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 37-36, Hawaii Revised Statutes, is amended to read as follows:

**“§37-36 Modification.** (a) The director of finance[, at any time,] may modify or amend any previous allotment [upon application of, or] upon notice to[,] the department or establishment concerned; provided that:

- (1) For the University of Hawaii, the director of finance may modify or amend any previous allotment only upon application of or notice to the university, and upon public declaration, which shall be made ten days prior to the modification or amendment taking effect;
- (2) The modification or amendment shall be made only to avoid an illegal result or in anticipation of a revenue shortfall;
- (3) No deficit or undue reduction of funds to meet future needs of the department or establishment will result from the modification or amendment; and

- (4) No modification or amendment shall reduce an allotment below the amount required to meet valid obligations or commitments previously incurred against the allotted funds.

(b) Prior to the implementation of any modification in allotment proposed by the director of finance pursuant to subsection (a), in which the sum of the modifications exceed 2.5 per cent of the total general fund appropriation made by the legislature in any fiscal year, the director shall notify the president of the senate, the speaker of the house of representatives, and the chairpersons of the senate committee on ways and means and the house of representatives committee on finance, respectively, of the director's intent."

SECTION 2. Section 37-37, Hawaii Revised Statutes, is amended to read as follows:

**"§37-37 Reduction.** (a) Except as provided in subsection (b), when the director of finance determines at any time that the probable receipts from taxes or any other sources for any appropriation will be less than was anticipated, and that consequently the amount available for the remainder of the term of the appropriation or for any allotment period will be less than the amount estimated or allotted therefor, the director shall, with the approval of the governor and after notice to the department or establishment concerned, reduce the amount allotted or to be allotted; provided that no reduction reduces any allotted amount below the amount required to meet valid obligations or commitments previously incurred against the allotted funds.

(b) For the University of Hawaii, when the director of finance determines at any time that the probable receipts from taxes or any other sources for any appropriation will be less than was anticipated, and that consequently the amount available for the remainder of the term of the appropriation or for any allotment period will be less than the amount estimated or allotted therefor, the director shall advise the governor of the situation, and the governor shall redetermine the allotment ceiling for the affected source or sources of funding pursuant to section 37-34, and shall advise the university and make a public declaration ten days prior to the effective date of the redetermination. The university, not more than twenty days after the governor's notification, shall submit revised estimates consistent with the governor's redetermination to the director of finance. Otherwise, the director of finance shall modify, amend, or reduce any allotment of the university to comply with the governor's redetermination; provided that no reduction shall reduce any allotted amount below the amount required to meet valid obligations or commitments previously incurred against the allotted funds.

(c) Prior to the implementation of any reduction in allotment proposed by the director of finance or the governor pursuant to subsection (a) or (b), in which the sum of the reductions exceed 2.5 per cent of the total general fund appropriation made by the legislature in any fiscal year, the director of finance shall notify the president of the senate, the speaker of the house of representatives, and the chairpersons of the senate committee on ways and means and the house of representatives committee on finance, respectively, of the director's intent."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 1996.

(Approved June 18, 1996.)

A Bill for an Act Relating to State Enterprise Zones.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 209E-2, Hawaii Revised Statutes, is amended:

1. By adding the definitions of “education and training services”, “full-time employee”, “information technology design and production services”, “medical and health care services”, and “telecommunication services” to be appropriately inserted and to read as follows:

“‘Education and training services’ include courses and programs for business executives in international business management, marketing, financial services, human resources, risk management, and for technicians in environmental sciences and remediation.

“‘Full-time employee’ means any employee for whom the employer is legally required to provide employee fringe benefits.

“‘Information technology design and production services’ means computer software development, imagery creation, and data compilation, but not consumer sales or service businesses.

“‘Medical and health care services’ includes research, clinical trials, telemedicine, and related consulting services, but not routine medical treatment or services.

“‘Telecommunication services’ include terrestrial (copper and optical fiber cable) and satellite information delivery systems, switching systems, ground stations, and related consulting services, but not consumer services.”

2. By amending the definition of “qualified business” to read as follows:

“‘Qualified business’ means any corporation, partnership, or sole proprietorship authorized to do business in the State which is qualified under section 209E-9 and is:

- (1) Subject to the state corporate or individual income tax under chapter 235;
- (2) Engaged in manufacturing, the wholesale sale of tangible personal property[,] as defined in section 237-4, or a service business [or calling;] as defined in this chapter; or
- (3) Engaged in producing agricultural products where the business is a producer as defined in section 237-5.”

3. By amending the definition of “service business” to read as follows:

“‘Service business [or calling]’ for the purposes of this chapter means any corporation, partnership, or sole proprietorship that [acts upon or processes tangible personal property, such as cleaning, repair and maintenance and does not mean activities which are not performed upon tangible personal property.] repairs ships or aircraft, provides telecommunication services, information technology design and production services, medical and health care services, or education and training services as defined in this chapter.”

4. By repealing the definition of “low income employee”.

[“‘Low-income employee’ means a person whose family income during the twelve months prior to being hired by a qualified business is less than the most recently published federal Department of Labor lower living standard income levels for the county in which the person is hired.”]

5. By repealing the definition of “wholesale”.

[“‘Wholesale’ means those activities defined in section 237-4.”]

SECTION 2. Section 209E-9, Hawaii Revised Statutes, is amended to read as follows:



**“§209E-9 Eligibility.** (a) Any business firm may be designated a “qualified business” for purposes of this chapter if the business:

- (1) Begins the operation of a trade or business within an enterprise zone;
- (2) During each taxable year has at least fifty per cent of its enterprise zone establishment’s gross receipts attributable to the active conduct of trade or business within the enterprise zone; [and]
- (3) [Has forty per cent or more of the average annual number of full-time employees employed at the business’ establishment or establishments located within the enterprise zone who are low-income employees.] Increases its average annual number of full-time employees by at least ten per cent by the end of its first tax year of participation; and
- (4) During each subsequent taxable year at least maintains that higher level of employment.

(b) A business also may be designated a “qualified business” for purposes of this chapter if the business:

- (1) Is actively engaged in the conduct of a trade or business in an area immediately prior to an area being designated an enterprise zone;
- (2) Meets the requirements of subsection (a)(2);
- (3) Increases [the] its average annual number of full-time employees employed at the business’ establishment or establishments located within the enterprise zone by at least [five] ten per cent [over the preceding year’s employment with not less than forty per cent of the increase being low-income employees and during each subsequent taxable year maintains that higher level of employment; and
- (4) Increases by at least five per cent during each taxable year the average number of full-time low-income employees.] annually.

(c) Subsections (a)(1), (a)(3), (a)(4), and (b)(1) shall not apply to agriculture producers in any county with a population of one-hundred thousand or less.

[(c)] (d) After designation as an enterprise zone, each qualified business firm in the zone shall submit annually to the department [a statement requesting one or more of the tax incentives provided in this chapter. The statement shall be accompanied by] an approved form supplied by the department [and completed by an independent accountant which states that] which provides the information necessary for the department to determine if the business firm meets the definition of a “qualified business”. [A copy of the statement] The approved form shall be submitted by each business to the [department shall be forwarded to the] governing body of the county in which the enterprise zone is located[.], then forwarded to the department by the governing body of the county.

[(d)] (e) The form referred to in subsection [(c)] (d) shall be prima facie evidence of the eligibility of a business for the purposes of this section.

[(e)] (f) Tangible personal property must be sold by an establishment of a qualified business within an enterprise zone and the transfer of title and delivery to the buyer of the tangible personal property must take place in the same enterprise zone in which the tangible personal property is sold. Services must be sold by an establishment of a qualified business engaged in a service business or calling within an enterprise zone and the services must be delivered in the same enterprise zone in which sold. Any services rendered outside of an enterprise zone shall not be deemed to be the services of a qualified business.”

SECTION 3. Section 209E-11, Hawaii Revised Statutes, is amended to read as follows:

**“§209E-11 State general excise tax exemptions.** The department shall certify annually to the department of taxation that any qualified business is exempt from the payment of general excise taxes on the gross proceeds from the manufac-

ture of tangible personal property, the wholesale sale of tangible personal property, or the engaging in a service business [or calling] by a qualified business in the enterprise zone. The exemption shall extend for a period not to exceed seven years.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval; provided that on June 30, 1998, section 209E-9(c), Hawaii Revised Statutes, shall be repealed and the remaining subsections in section 209E-9, Hawaii Revised Statutes, shall be re-numbered accordingly.

(Approved June 18, 1996.)

ACT 287

H.B. NO. 2800

A Bill for an Act Relating to the State Budget.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. This Act shall be known and may be cited as the Supplemental Appropriations Act of 1996.

SECTION 2. This Act amends Act 218, Session Laws of Hawaii 1995, and other appropriations and authorizations effective during fiscal biennium 1995-1997.

SECTION 3. Part II, Act 218, Session Laws of Hawaii 1995, is amended by amending section 3 to read as follows:

“SECTION 3. **APPROPRIATIONS.** The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are hereby appropriated or authorized, as the case may be, from the means of financing specified to the expending agencies designated for the fiscal biennium beginning July 1, 1995, and ending June 30, 1997. The total expenditures and the number of positions in each fiscal year of the biennium shall not exceed the sums and the number indicated for each year, except as provided elsewhere in this Act.

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
A. ECONOMIC DEVELOPMENT							
1. BED102 - COMMERCE AND INDUSTRY							
	OPERATING		BED	36.00*		33.00*	
			BED	7,257,975A		5,211,087A	
			BED	1,721,988B		325,000B	
			BED	173,192U		U	
			BED	4,250,000W		5,750,000W	
2. BED113 - STATE TOURISM OFFICE							
	OPERATING		BED	6.00*		6.00*	
			BED	25,041,183A		27,041,183A	
			BED	13,000,000B		17,000,000B	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		INVESTMENT CAPITAL	BED			9,460,000C	
3.		BED107 - FOREIGN TRADE		23.00*		23.00*	
		OPERATING	BED	1,776,923B		1,756,423B	
4.		AGR101 - FINANCIAL ASSISTANCE FOR AGRICULTURE		12.00*		12.00*	
		OPERATING	AGR	932,490B		932,490B	
			AGR	59,400T		59,400T	
			AGR	6,000,000W		4,500,000W	
5.		AGR122 - PLANT PEST AND DISEASE CONTROL		93.00*		92.00*	
		OPERATING	AGR	3,644,927A		3,655,417A	
			AGR	275,355N		275,355N	
			AGR	328,600T		328,600T	
			AGR	209,960U		209,960U	
6.		AGR131 - ANIMAL QUARANTINE		59.00*		59.00*	
		OPERATING	AGR	2,239,634A		2,293,071A	
			AGR	245,857U		254,857U	
7.		AGR132 - ANIMAL DISEASE CONTROL		20.50*		20.50*	
		OPERATING	AGR	965,643A		941,138A	
			AGR	54,230T		15,000T	
8.		LNR172 - FORESTRY - PRODUCTS DEVELOPMENT		20.00*		20.00*	
		OPERATING	LNR	726,649A		691,402A	
			LNR	200,000B		200,000B	
				2.00*		2.00*	
			LNR	124,505N		124,505N	
9.		AGR151 - MARKETING INFO & DISTRIBUTION SYSTEMS IMPROVEMENT FOR AGR		54.00*		54.00*	
		OPERATING	AGR	2,608,691A		2,655,696A	
			AGR	32,199N		101,924N	
			AGR	137,000T		137,000T	
			AGR	82,000W		267,000W	
10.		AGR141 - AGRICULTURAL RESOURCE MANAGEMENT		21.00*		9.00*	
		OPERATING	AGR	321,703A		277,374A	
			AGR	304,267B		283,907B	
			AGR	679,472W		755,320W	
		INVESTMENT CAPITAL	AGR	1,565,000C		1,400,000C	
11.		AGR192 - GENERAL ADMINISTRATION FOR AGR		34.00*		33.00*	
		OPERATING	AGR	1,576,519A		1,321,602A	
			AGR			308,591W	
		INVESTMENT CAPITAL	AGS	50,000C			
12.		AGR102 - FINANCIAL ASSISTANCE FOR AQUACULTURE					

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
	OPERATING		AGR	500,000W		500,000W	
13.	LNR153 - COMMERCIAL FISHERIES AND AQUACULTURE						
				20.00*		20.00*	
	OPERATING		LNR	1,306,614A		1,252,637A	
			LNR	268,210N		268,210N	
14.	BED120 - ENERGY DEVELOPMENT AND MANAGEMENT						
				7.00*		7.00*	
	OPERATING		BED	1,778,832A		2,155,869A	
			BED	959,000B		759,000B	
			BED	3,031,326N		3,031,326N	
			BED			101,709W	
	INVESTMENT CAPITAL		BED	290,000C			
15.	LNR141 - WATER AND LAND DEVELOPMENT						
				3.00*		6.00*	
	OPERATING		LNR	353,157A		395,305A	
			LNR			234,620B	
			LNR	110,000W		110,000W	
	INVESTMENT CAPITAL		LNR	B		B	
			LNR	10,528,000C		6,525,000C	
			LNR	711,000W		954,000W	
16.	BED130 - ECON PLANNING & RESEARCH FOR ECON DEVELOPMENT						
				11.00*		11.00*	
	OPERATING		BED	531,715A		491,715A	
17.	BED142 - GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT						
				38.00*		58.00*	
	OPERATING		BED	2,393,425A		4,579,861A	
			BED	2,316,196B		3,591,940B	
						4.00*	
			BED			778,190N	
	INVESTMENT CAPITAL		BED			415,000C	
18.	BED143 - HIGH TECHNOLOGY DEVELOPMENT CORPORATION						
						3.00*	
	OPERATING		BED			1,476,610A	
			BED			1,679,907B	
19.	AGR161 - AGRICULTURAL RESEARCH AND COORDINATION						
						1.00*	
	OPERATING		AGR			828,476A	
<b>B. EMPLOYMENT</b>							
1.	LBR111 - PLACEMENT SERVICES						
	OPERATING		LBR	2,323A		A	
			LBR	549,372B		460,330B	
				109.50*		111.00*	
			LBR	12,682,268N		13,339,899N	
			LBR	1,956,971U		1,574,201U	
2.	LBR123 - APPRENTICESHIP & OTHER TRAINING PROGRAMS						
				6.00*		3.30*	
	OPERATING		LBR	210,956A		134,511A	
3.	LBR131 - EMPLOYMENT AND TRAINING PROGRAMS						
				3.00*		2.00*	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
	OPERATING		LBR	355,989A		337,353A	
			LBR	3,680,029B		3,737,497B	
				11.00*		12.20*	
			LBR	16,056,380N		16,653,974N	
4.	LBR135 - COMMISSION ON EMPLOYMENT & HUMAN RESOURCES						
				5.00*		5.00*	
	OPERATING		LBR	213,878A		196,026A	
			LBR	234,639N		234,639N	
5.	LBR136 - SCHOOL TO WORK TRANSITION CENTER PROGRAM						
	OPERATING		LBR	842,565A			A
6.	LBR143 - OCCUPATIONAL SAFETY & HEALTH						
				51.50*		46.00*	
	OPERATING		LBR	1,701,067A		1,657,745A	
				27.50*		25.00*	
			LBR	1,554,136N		1,481,623N	
7.	LBR152 - WAGE STANDARDS & FAIR EMPLOYMENT PRACTICES						
				32.35*		30.35*	
	OPERATING		LBR	1,087,525A		1,063,950A	
8.	LBR153 - CIVIL RIGHTS COMMISSION						
				25.50*		23.50*	
	OPERATING		LBR	1,090,178A		955,780A	
						2.00*	
			LBR	176,316N		348,284N	
9.	LBR161 - PUBLIC AND PRIVATE EMPLOYMENT						
				2.00*		2.00*	
	OPERATING		LBR	467,098A		499,991A	
10.	LBR171 - UNEMPLOYMENT COMPENSATION						
	OPERATING		LBR	4,501,534A		8,501,534A	
			LBR	160,901,296B		166,507,172B	
				231.90*		231.90*	
			LBR	11,595,849N		11,688,470N	
11.	LBR183 - DISABILITY COMPENSATION						
				126.00*		125.00*	
	OPERATING		LBR	4,153,480A		4,092,723A	
			LBR	17,560,000B		18,060,000B	
12.	HMS802 - VOCATIONAL REHABILITATION						
				25.95*		25.95*	
	OPERATING		HMS	3,605,740A		3,609,978A	
			HMS	773,814B		B	
				89.55*		89.55*	
			HMS	7,813,126N		7,863,126N	
			HMS			919,814W	
	INVESTMENT CAPITAL		HMS	87,000N		60,000N	
13.	LBR901 - DLIR-DATA GATHERING, RESEARCH AND ANALYSIS						
				14.88*		8.88*	
	OPERATING		LBR	770,892A		686,172A	
				23.12*		29.12*	
			LBR	1,673,263N		1,973,143N	
14.	LBR902 - GENERAL ADMINISTRATION						

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
				30.12*		29.12*	
	OPERATING		LBR	1,244,169A		1,209,835A	
				29.52*		29.52*	
			LBR	1,961,346N		1,985,186N	
15.	LBR903 - OFFICE OF COMMUNITY SERVICES						
				5.00*		5.00*	
	OPERATING		LBR	6,078,673A		5,685,352A	
				3.00*		3.00*	
			LBR	5,363,957N		5,540,539N	
	INVESTMENT CAPITAL		LBR	5,000,000C		1,500,000C	
16.	LBR812 - LABOR & INDUSTRIAL RELATIONS APPEALS BOARD						
				11.00*		11.00*	
	OPERATING		LBR	566,432A		565,576A	
C. TRANSPORTATION FACILITIES							
1.	TRN102 - HONOLULU INTERNATIONAL AIRPORT						
				595.50*		589.50*	
	OPERATING		TRN	68,329,141B		68,233,420B	
	INVESTMENT CAPITAL		TRN	13,931,000B		4,095,000B	
			TRN	3,770,000E		1,695,000E	
			TRN	8,000,000N		7,650,000N	
2.	TRN104 - GENERAL AVIATION						
				2.00*		2.00*	
	OPERATING		TRN	914,817B		923,232B	
3.	TRN111 - HILO INTERNATIONAL AIRPORT						
				76.00*		76.00*	
	OPERATING		TRN	7,844,746B		7,467,809B	
4.	TRN114 - KE-AHOLE AIRPORT						
				75.00*		75.00*	
	OPERATING		TRN	7,051,116B		7,443,137B	
	INVESTMENT CAPITAL		TRN	332,000B		8,206,000B	
			TRN			1,800,000N	
5.	TRN116 - WAIMEA-KOHALA AIRPORT						
				2.00*		2.00*	
	OPERATING		TRN	127,358B		128,855B	
6.	TRN118 - UPOLU AIRPORT						
	OPERATING		TRN	7,207B		7,473B	
7.	TRN131 - KAHULUI AIRPORT						
				168.00*		168.00*	
	OPERATING		TRN	14,862,805B		13,603,835B	
	INVESTMENT CAPITAL		TRN	11,404,000B		9,627,000B	
			TRN	2,885,000E			
			TRN	7,000,000N		20,529,000N	
8.	TRN133 - HANA AIRPORT						
				2.00*		2.00*	
	OPERATING		TRN	188,432B		144,198B	
9.	TRN135 - KAPALUA AIRPORT						
				5.00*		5.00*	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		OPERATING	TRN	898,453B		910,565B	
10.	TRN141	- MOLOKAI AIRPORT					
		OPERATING	TRN	15.00*		15.00*	
				1,187,537B		1,193,316B	
11.	TRN143	- KALAUPAPA AIRPORT					
		OPERATING	TRN	1.00*		1.00*	
				59,478B		52,470B	
12.	TRN151	- LANAI AIRPORT					
		OPERATING	TRN	10.00*		10.00*	
		INVESTMENT CAPITAL	TRN	939,469B		1,460,826B	
			TRN			200,000B	
13.	TRN161	- LIHUE AIRPORT					
		OPERATING	TRN	104.00*		104.00*	
		INVESTMENT CAPITAL	TRN	9,202,777B		8,364,095B	
			TRN	479,000B		3,900,000B	
			TRN			7,200,000N	
14.	TRN163	- PORT ALLEN AIRPORT					
		OPERATING	TRN	1,792B		211,860B	
15.	TRN195	- AIRPORTS ADMINISTRATION					
		OPERATING	TRN	148,141A		178,354A	
				104.00*		101.00*	
			TRN	198,325,678B		147,721,189B	
		INVESTMENT CAPITAL	TRN	3,155,000B		10,918,000B	
			TRN	493,000E		590,000E	
			TRN	480,000N		200,000N	
16.	TRN301	- HONOLULU HARBOR					
		OPERATING	TRN	102.00*		102.00*	
		INVESTMENT CAPITAL	TRN	11,342,195B		11,396,018B	
			TRN			1,500,000B	
			TRN			6,428,000E	
17.	TRN303	- BARBERS POINT HARBOR					
		OPERATING	TRN	2.00*		2.00*	
		INVESTMENT CAPITAL	TRN	380,976B		374,210B	
			TRN	220,000B		220,000B	
			TRN	250,000N		250,000N	
18.	TRN305	- KEWALO BASIN					
		OPERATING	TRN	2.00*		2.00*	
		INVESTMENT CAPITAL	TRN	789,058B		779,578B	
			TRN			150,000B	
19.	TRN311	- HILO HARBOR					
		OPERATING	TRN	10.00*		10.00*	
		INVESTMENT CAPITAL	TRN	1,308,088B		1,235,857B	
			TRN	622,000B		711,000B	
20.	TRN313	- KAWAIHAE HARBOR					
		OPERATING	TRN	4.00*		4.00*	
		INVESTMENT CAPITAL	TRN	529,534B		481,883B	
			TRN			976,000B	
21.	TRN331	- KAHULUI HARBOR					

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		OPERATING	TRN	14.00*		14.00*	
		INVESTMENT CAPITAL	TRN	1,497,011B		1,483,967B	
			TRN	483,000B		95,000B	
			TRN	3,891,000E		1,447,000E	
			TRN	100,000N		100,000N	
22.	TRN341 - KAUNAKAKAI HARBOR						
	OPERATING		TRN	1.00*		1.00*	
				190,908B		211,927B	
23.	TRN361 - NAWILIWILI HARBOR						
	OPERATING		TRN	12.00*		12.00*	
	INVESTMENT CAPITAL		TRN	1,027,659B		984,996B	
			TRN	1,968,000B		1,935,000E	
24.	TRN363 - PORT ALLEN HARBOR						
	OPERATING		TRN	1.00*		1.00*	
				279,090B		268,831B	
25.	TRN351 - KAUMALAPAU HARBOR						
	INVESTMENT CAPITAL		TRN			201,000E	
26.	TRN395 - HARBORS ADMINISTRATION						
	OPERATING		TRN	51.00*		71.00*	
	INVESTMENT CAPITAL		TRN	29,755,485B		31,119,803B	
			TRN	1,069,000B		693,000B	
			TRN	1,000,000E		1,000,000E	
27.	TRN501 - OAHU HIGHWAYS						
	OPERATING		TRN	235.00*		235.00*	
	INVESTMENT CAPITAL		AGS	31,242,523B		34,168,822B	
			TRN	500,000B			
			TRN	2,200,000B		53,623,000B	
			TRN	8,421,000E		9,106,000E	
			TRN	27,845,000N		69,798,000N	
			TRN	2,440,000R		5,560,000R	
28.	TRN511 - HAWAII HIGHWAYS						
	OPERATING		TRN	117.00*		117.00*	
	INVESTMENT CAPITAL		TRN	22,378,508B		23,141,682B	
			TRN			29,125,000B	
			TRN	4,000,000E		7,692,000E	
			TRN	4,630,000N		26,446,000N	
29.	TRN531 - MAUI HIGHWAYS						
	OPERATING		TRN	65.00*		65.00*	
	INVESTMENT CAPITAL		TRN	12,585,197B		12,917,560B	
			TRN	12,620,000B		31,508,000B	
			TRN	712,000E		5,213,000E	
			TRN	41,978,000N		12,132,000N	
30.	TRN541 - MOLOKAI HIGHWAYS						
	OPERATING		TRN	12.00*		12.00*	
	INVESTMENT CAPITAL		TRN	2,354,467B		2,279,450B	
			TRN	26,000E		120,000E	
			TRN	34,000N		480,000N	
31.	TRN551 - LANAI HIGHWAYS						
				2.00*		2.00*	



## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		OPERATING	TRN	661,757B		626,758B	
		INVESTMENT CAPITAL	TRN	9,000E		90,000E	
			TRN	27,000N		270,000N	
32.	TRN561	KAUAI HIGHWAYS		45.00*		45.00*	
		OPERATING	TRN	5,130,055B		5,776,744B	
		INVESTMENT CAPITAL	TRN	3,500,000B		12,566,000B	
			TRN	1,106,000E		2,100,000E	
			TRN	2,791,000N		4,402,000N	
			TRN			1,000,000R	
33.	TRN595	HIGHWAYS ADMINISTRATION		63.00*		63.00*	
		OPERATING	TRN	66,798,121B		63,033,699B	
			TRN			615,000N	
		INVESTMENT CAPITAL	TRN	6,000,000B		6,000,000B	
			TRN	560,000C		3,467,000C	
			TRN	19,005,000E		26,370,000E	
			TRN	21,495,000N		67,534,000N	
			TRN	500,000S			
34.	TRN597	HIGHWAY SAFETY		36.00*		36.00*	
		OPERATING	TRN	4,857,452B		4,933,496B	
				4.00*		4.00*	
			TRN	395,159N		296,696N	
35.	TRN995	GENERAL ADMINISTRATION		81.00*		81.00*	
		OPERATING	TRN	8,944,822B		8,570,906B	
			TRN	9,256N			
<b>D. ENVIRONMENTAL PROTECTION</b>							
1.	HTH840	ENVIRONMENTAL MANAGEMENT		72.00*		56.00*	
		OPERATING	HTH	2,955,921A		2,375,909A	
				47.00*		48.00*	
			HTH	5,729,501B		6,084,702B	
				39.00*		40.00*	
			HTH	3,933,579N		3,922,510N	
				5.00*		11.00*	
		INVESTMENT CAPITAL	HTH	30,574,345W		30,991,575W	
			HTH	2,447,000C			
			HTH	12,236,000N			
2.	AGR846	PESTICIDES		22.00*		22.00*	
		OPERATING	AGR	708,487A		736,286A	
			AGR	500,000N		350,000N	
3.	LNR401	AQUATIC RESOURCES		22.00*		22.00*	
		OPERATING	LNR	1,079,075A		1,265,867A	
						1.00*	
			LNR	402,459N		1,081,717N	
4.	LNR402	FORESTS AND WILDLIFE RESOURCES		54.50*		54.50*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		OPERATING	LNR	2,339,265A		2,295,138A	
			LNR	4.50*		4.50*	
		INVESTMENT CAPITAL	LNR	857,273N		857,273N	
			LNR	2,996,000C		48,000C	
5.	LNR 403 - MINERAL RESOURCES						
		OPERATING	LNR		*		*
					A		A
6.	LNR404 - WATER RESOURCES						
		OPERATING	LNR	19.00*		16.00*	
		INVESTMENT CAPITAL	LNR	1,434,407A		1,434,407A	
			LNR	232,000C			
7.	LNR405 - CONSERVATION & RESOURCES ENFORCEMENT						
		OPERATING	LNR	75.50*		83.50*	
			LNR	3,445,651A		3,689,656A	
			LNR			9.00*	
			LNR	2.50*		1,205,003B	
			LNR	636,677N		2.50*	
			LNR	1.00*		624,652N	
			LNR	8,136W		1.00*	
			LNR			8,136W	
8.	LNR406 - COASTAL AREAS						
		OPERATING	LNR		A		A
9.	LNR407 - NATURAL AREA RESERVES & MANAGEMENT						
		OPERATING	LNR	14.00*		14.00*	
			LNR	2,854,322A		1,247,673A	
			LNR	1,500,000B		1,500,000B	
10.	HTH850 - POLICY DVLPMENT,COORD & ANLYS FOR NAT P ENV						
		OPERATING	HTH	5.00*		5.00*	
			HTH	226,491A		222,654A	
11.	LNR906 - LNR-NATURAL PHYSICAL ENVIRONMENT						
		OPERATING	LNR	41.00*		42.00*	
		INVESTMENT CAPITAL	LNR	1,848,373A		1,881,639A	
			LNR	1,500,000C		1,500,000C	
12.	HTH849 - ENVIRONMENTAL HEALTH ADMINISTRATION						
		OPERATING	HTH	15.50*		15.50*	
			HTH	878,211A		777,796A	
			HTH	22.50*		22.50*	
			HTH	2,509,205N		2,566,496N	
			HTH	8.00*		9.00*	
			HTH	1,188,902W		1,253,182W	
<b>E. HEALTH</b>							
1.	HTH101 - TUBERCULOSIS/HANSEN'S DISEASE CONTROL						
		OPERATING	HTH	36.00*		36.00*	
			HTH	2,089,013A		1,981,522A	
			HTH	3.00*		3.00*	
		INVESTMENT CAPITAL	AGS	1,745,352N		1,795,669N	
			AGS	792,000C			
2.	HTH111 - HANSEN'S DISEASE INSTITUTIONAL SERVICES						
				62.00*		62.00*	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
	OPERATING		HTH	3,947,854A		3,864,904A	
3.	HTH121 - STD/AIDS PREVENTION SERVICES			14.00*		14.00*	
	OPERATING		HTH	4,922,047A		5,295,627A	
			HTH	4.50*		4.50*	
			HTH	2,206,116N		2,206,116N	
4.	HTH131 - EPIDEMIOLOGY SERVICES			14.00*		14.00*	
	OPERATING		HTH	1,344,682A		1,241,062A	
			HTH	1.00*		1.00*	
			HTH	3,689,982N		3,689,982N	
5.	HTH141 - DENTAL DISEASES			22.60*		22.60*	
	OPERATING		HTH	1,087,995A		968,233A	
6.	HTH151 - PREVENTIVE HEALTH SERVICES			3.00*		3.00*	
	OPERATING		HTH	801,134A		585,930A	
			HTH	838,103N		844,603N	
7.	HTH160 - NUTRITION			3.00*		3.00*	
	OPERATING		HTH	240,802A		136,067A	
			HTH	118.50*		118.50*	
			HTH	29,272,857N		29,272,857N	
8.	HTH180 - HEALTH EDUCATION & INJURY PREVENTION			21.80*		21.80*	
	OPERATING		HTH	936,235A		881,849A	
			HTH	3.00*		3.00*	
			HTH	1,036,166N		1,079,214N	
9.	HTH195 - HPDP ADMINISTRATION			10.00*		10.00*	
	OPERATING		HTH	462,248A		397,703A	
			HTH	282,221N		289,814N	
10.	HTH210 - COMMUNITY HOSPITALS			3,002.25*		3,008.25*	
	OPERATING		HTH	272,227,489B		272,575,421B	
11.	HTH211 - HILO HOSPITAL						
12.	HTH212 - HONOKAA HOSPITAL						
13.	HTH213 - KA'U HOSPITAL						
14.	HTH214 - KOHALA HOSPITAL INVESTMENT CAPITAL		AGS	271,000C			
15.	HTH215 - KONA HOSPITAL INVESTMENT CAPITAL		AGS	4,000,000B			
			AGS	5,368,000C			
16.	HTH221 - MAUI MEMORIAL HOSPITAL INVESTMENT CAPITAL		AGS	4,442,000C		1,991,000C	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
			HTH			9,000,000E	
17.	HTH222	- HANA MEDICAL CENTER INVESTMENT CAPITAL	AGS	450,000C			
18.	HTH223	- KULA HOSPITAL					
19.	HTH224	- LANAI COMMUNITY HOSPITAL					
20.	HTH231	- KAUAI VETERANS MEMORIAL HOSPITAL INVESTMENT CAPITAL	AGS	383,000C		300,000C	
21.	HTH232	- SAMUEL MAHELONA MEMORIAL HOSPITAL					
22.	HTH241	- MALUHIA HOSPITAL					
23.	HTH242	- LEAHI HOSPITAL					
24.	SUB601	- PRIVATE HOSPITALS & MEDICAL SERVICES OPERATING	SUB	1,583,274A		1,703,274A	
		INVESTMENT CAPITAL	HTH	3,500,000C			
25.	HTH295	- COMMUNITY HOSPITALS ADMINISTRATION OPERATING	HTH	373,599A		332,088A	
				40.00*		40.00*	
			HTH	3,270,613B		3,421,803B	
26.	HTH420	- ADULT MENTAL HEALTH					
	OPERATING			225.10*		224.10*	
			HTH	13,915,617A		13,348,885A	
			HTH	564,146B		864,146B	
			HTH	1,026,514N		1,026,514N	
27.	HTH430	- HAWAII STATE HOSPITAL					
	OPERATING		HTH	611.00*		611.00*	
				31,324,182A		30,717,889A	
28.	HTH440	- ALCOHOL & DRUG ABUSE					
	OPERATING		HTH	7.00*		7.00*	
				5,446,531A		5,746,531A	
				2.00*		2.00*	
			HTH	5,621,236N		5,621,236N	
29.	HTH460	- CHILD & ADOLESCENT MENTAL HEALTH					
	OPERATING		HTH	164.00*		158.00*	
			HTH	28,838,388A		36,010,634A	
			HTH	1,902,292B		1,902,292B	
			HTH	1,507,861N		4,598,644N	
30.	HTH495	- BEHAVIORAL HEALTH SERVICES ADMINISTRATION					
	OPERATING		HTH	65.00*		66.00*	
				4,877,382A		6,675,775A	
				4.00*		4.00*	
			HTH	934,533N		644,783N	
			HTH			1,735,400U	
31.	HTH501	- DEVELOPMENTAL DISABILITIES					
	OPERATING		HTH	312.75*		310.75*	
				26,077,610A		25,977,759A	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		INVESTMENT CAPITAL	AGS	520,000C		5,572,000C	
32.	HTH530 - FAMILY HEALTH SERVICES						
	OPERATING		HTH	84.50*		88.50*	
			HTH	13,931,722A		14,117,278A	
			HTH			3.00*	
			HTH	52.00*		500,000B	
			HTH	5,699,777N		53.00*	
			HTH	1,100,000U		5,926,948N	
						1,100,000U	
33.	HTH540 - SCHOOL HEALTH SERVICES						
	OPERATING		HTH	363.00*		359.00*	
			HTH	9,274,726A		8,754,641A	
			HTH	2.00*		2.00*	
				451,795N		451,795N	
34.	HTH570 - COMMUNITY HEALTH NURSING						
	OPERATING		HTH	149.00*		145.50*	
			HTH	6,996,891A		6,514,072A	
			HTH	1.00*		1.00*	
			HTH	29,675N		29,675N	
			HTH	1,334,411U			
35.	HTH595 - PERSONAL HEALTH SERVICES ADMINISTRATION						
	OPERATING		HTH	33.00*		33.00*	
			HTH	2,569,068A		2,388,038A	
			HTH	292,579B		292,579B	
			HTH	2.00*		2.00*	
			HTH	283,880N		283,880N	
			HTH	29,598U		29,598U	
36.	HTH610 - ENVIRONMENTAL HEALTH SERVICES						
	OPERATING		HTH	156.00*		154.00*	
			HTH	5,417,087A		5,150,519A	
			HTH			4.00*	
			HTH	300,000B		300,000B	
			HTH			7.00*	
			HTH	82,019N		568,730N	
			HTH	2.00*		2.00*	
			HTH	61,942U		61,942U	
37.	HTH710 - STATE LABORATORY SERVICES						
	OPERATING		HTH	85.00*		85.00*	
				4,421,729A		4,437,397A	
38.	HTH720 - MED FACILITIES - STDS, INSPECTION, LICENSING						
	OPERATING		HTH	17.80*		16.90*	
			HTH	960,274A		914,948A	
			HTH	20.70*		20.70*	
				1,541,841N		1,560,956N	
39.	HTH730 - EMERGENCY MEDICAL SERVICES						
	OPERATING		HTH	12.00*		12.00*	
			HTH	32,960,503A		31,024,177A	
				295,786N		295,786N	
40.	HTH760 - HEALTH STATUS MONITORING						
	OPERATING		HTH	29.00*		29.00*	
				1,430,635A		1,393,440A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
			HTH	124,139N		124,139N	
41.	HTH795	HEALTH RESOURCES ADMINISTRATION					
	OPERATING		HTH	13.00*		13.00*	
			HTH	547,540A		547,540A	
			HTH	55,000N		55,000N	
42.	HTH906	COMPREHENSIVE HEALTH PLANNING					
	OPERATING		HTH	8.00*		8.00*	
			HTH	462,606A		407,732A	
43.	HTH907	GENERAL ADMINISTRATION					
	OPERATING		HTH	122.00*		121.50*	
			HTH	5,417,808A		5,365,596A	
			HTH	6.50*		6.50*	
	INVESTMENT CAPITAL		HTH	486,228N		486,228N	
			AGS	90,000C		500,000C	
F. SOCIAL SERVICES							
1.	HMS301	CHILD WELFARE SERVICES					
	OPERATING		HMS	171.43*		171.43*	
			HMS	16,035,157A		15,938,688A	
			HMS	100,000B		100,000B	
			HMS	172.57*		172.57*	
			HMS	7,965,772N		9,909,942N	
			HMS	334,176U		294,801U	
2.	HMS302	CHILD DAY CARE SERVICES					
	OPERATING		HMS	26.00*		30.00*	
			HMS	2,705,279A		5,620,554A	
			HMS	1.00*		2.00*	
			HMS	1,792,288N		5,207,288N	
			HMS	2,434,830U		U	
3.	HMS303	CHILD PLACEMENT BOARD AND RELATED CLIENT PAYMENTS					
	OPERATING		HMS	70.50*		70.50*	
			HMS	6,080,526A		6,023,920A	
			HMS	3,795,420N		3,884,106N	
			HMS	207,454U		238,845U	
4.	HMS601	COMMUNITY LONG TERM CARE SERVICES					
	OPERATING		HMS	70.50*		70.50*	
			HMS	6,080,526A		6,023,920A	
			HMS	3,795,420N		3,884,106N	
			HMS	207,454U		238,845U	
5.	HMS501	YOUTH SERVICES ADMINISTRATION					
	OPERATING		HMS	19.00*		23.00*	
			HMS	1,377,517A		1,167,244A	
			HMS	1,090,000N		1,535,505N	
	INVESTMENT CAPITAL		HMS	40,000C			
6.	HMS502	YOUTH SERVICES PROGRAM					
	OPERATING		HMS	*		*	
			HMS	3,363,773A		3,579,123A	
			HMS	223,600N		225,342N	
7.	HMS503	YOUTH RESIDENTIAL PROGRAMS					
	OPERATING		HMS	77.50*		77.50*	
			HMS	4,243,669A		4,243,669A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
			HMS	1,490,590N		1,502,204N	
8.	DEF112	SERVICES TO VETERANS					
	OPERATING		DEF	21.00*		21.00*	
	INVESTMENT CAPITAL		DEF	1,098,103A		1,132,303A	
			DEF	4,290,000C		500,000C	
			DEF	1,930,000N		1,300,000N	
			DEF	140,000S			
9.	HMS304	FOSTER CARE LICENSING					
	OPERATING		HMS	26.24*		26.24*	
			HMS	1,193,273A		1,193,273A	
			HMS	6.76*		6.76*	
			HMS	277,733N		380,121N	
10.	HMS201	PAYMNTS TO ASSIST FAMILIES WITH DEPNDNT CHLD					
	OPERATING		HMS	94,831,936A		98,087,871A	
			HMS	88,603,140N		84,749,467N	
11.	HMS202	PAYMNTS TO ASSIST THE AGED, BLIND & DISABLED					
	OPERATING		HMS	18,922,407A		22,959,228A	
12.	HMS204	OTHER GENERAL ASSISTANCE PAYMENTS					
	OPERATING		HMS	42,889,464A		27,047,944A	
13.	HMS206	OTHER FEDERAL ASSISTANCE PAYMENTS					
	OPERATING		HMS	1,491,331N		1,491,331N	
14.	HMS220	RENTAL HOUSING SERVICES					
	OPERATING		HMS	1,007,337A		1,007,337A	
			HMS	23.00*		*	
			HMS	2,140,993B		B	
			HMS	202.00*		202.00*	
			HMS	19,935,885N		19,935,885N	
			HMS			23.00*	
			HMS			3,641,893W	
15.	HMS807	TEACHER HOUSING					
	OPERATING		HMS	A		A	
			HMS	241,817B		B	
			HMS			241,817W	
16.	HMS229	HOUSING ASSISTANCE ADMINISTRATION					
	OPERATING		HMS	7.00*		*	
			HMS	353,607B		B	
			HMS	37.00*		37.00*	
			HMS	9,548,442N		9,548,442N	
			HMS			7.00*	
	INVESTMENT CAPITAL		HMS			353,607W	
			HMS			220,000C	
			HMS	12,795,000N		7,425,000N	
			HMS			65,000R	
17.	BUF225	PRIVATE HOUSING DEVELOPMENT & OWNERSHIP					
	OPERATING		BUF	18.00*		16.00*	
			BUF	3,516,862B		3,172,948B	
			BUF	153,464N		94,792N	
	INVESTMENT CAPITAL		BUF	1,900,000C			
			BUF			363,000W	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS				
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F	
18.	BUF223 - BROADENED HOMESITE OWNERSHIP							
	OPERATING		BUF	396,647B	*	239,421B	*	
19.	BUF227 - HOUSING FINANCE							
	OPERATING		BUF	7.00*		7.00*		
			BUF	1,140,642B		1,093,425B		
			BUF	3,499,221N		3,000,000N		
20.	BUF229 - HOUSING FINANCE & DEVELOPMENT ADMINISTRATION							
	OPERATING		BUF	17.00*		17.00*		
			BUF	2,751,770B		2,304,134B		
21.	HMS222 - RENTAL ASSISTANCE SERVICES							
	OPERATING		HMS	8.00*		5.25*		
			HMS	2,381,870A		2,381,870A		
			HMS	8.00*		10.75*		
			HMS	15,726,238N		15,874,607N		
22.	HMS224 - HOMELESS SERVICES							
	OPERATING		HMS	4.00*		4.00*		
	INVESTMENT CAPITAL		HMS	4,178,188A		4,178,188A		
						965,000C		
23.	BUF231 - RENTAL HOUSING TRUST FUND PROGRAM							
	OPERATING		BUF	14,739,803T		9,536,014T		
24.	HMS230 - HEALTH CARE PAYMENTS							
	OPERATING		HMS	275,980,759A		277,330,759A		
			HMS	270,971,757N		368,359,712N		
			HMS	15,606,905U		15,606,905U		
25.	HMS236 - ELIGIBILITY DETERMINATION							
	OPERATING		HMS	311.80*		356.73*		
			HMS	10,270,196A		15,766,242A		
			HMS	235.70*		280.77*		
			HMS	10,759,717N		17,208,695N		
26.	HMS238 - DISABILITY DETERMINATION							
	OPERATING		HMS	36.00*		39.00*		
			HMS	3,417,168N		3,538,423N		
27.	ATG500 - CHILD SUPPORT ENFORCEMENT SERVICES							
	OPERATING		ATG	44.88*		44.88*		
			ATG	1,548,948A		1,554,922A		
			ATG	100.98*		100.98*		
			ATG	12,652,515N		12,728,697N		
			ATG	7.14*		7.14*		
			ATG	2,300,000T		2,652,825T		
28.	HMS701 - JOBS PROGRAM							
	OPERATING		HMS	51.50*				
			HMS	6,293,586A				
			HMS	51.50*				
			HMS	7,288,175N				
29.	HMS702 - FOOD STAMP EMPLOYMENT & TRAINING							
	OPERATING		HMS	1.00*		2.00*		
			HMS	426,588A		457,843A		



## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
			HMS	811,466N		811,466N	
30.		HMS703 - GENERAL ASSISTANCE WORK PROGRAM					
	OPERATING		HMS	1.00*			*
				31,255A			A
31.		HHL602 - PLANNG, DEV, MGT & GEN SPPT FOR HAWN HMSTDS					
	OPERATING		HHL	53.00*		38.00*	
				2,128,851A		1,569,838A	
			HHL	64.00*		80.00*	
	INVESTMENT CAPITAL		HHL	3,403,326B		5,101,411B	
				260,000C			
32.		GOV861 - PLAN, PRGM DEV & COORD OF SVCS FOR CHD & YTH					
	OPERATING		GOV	11.00*			
			GOV	3,241,197A			
			GOV	3,300,000N			
33.		GOV602 - PLAN. PRGM DEV & COORD OF SVCS FOR ELDERLY					
	OPERATING		GOV	3.90*			*
				5,355,070A			A
			GOV	6.85*			*
			GOV	5,327,082N			N
34.		HTH520 - PLAN, PROG DEV & COORD OF SVS FOR HANDCPPD					
	OPERATING		HTH	6.00*		6.00*	
				731,411A		731,411A	
35.		HMS902 - GENERAL SUPPORT FOR HEALTH CARE PAYMENTS					
	OPERATING		HMS	32.17*		35.24*	
				5,101,200A		5,130,107A	
			HMS	20.83*		21.76*	
				6,418,315N		6,434,240N	
36.		HMS903 - GENERAL SUPPORT FOR PUBLIC WELFARE					
	OPERATING		HMS	58.24*		58.24*	
				4,240,691A		4,979,287A	
			HMS	50.76*		50.76*	
				4,374,677N		5,184,569N	
37.		HMS904 - GENERAL ADMINISTRATION (DSSH)					
	OPERATING		HMS	170.46*		173.36*	
				6,325,839A		11,510,608A	
			HMS	15.54*		22.39*	
				1,058,984N		6,665,455N	

## G. FORMAL EDUCATION

## 1. EDN100 - SCHOOL BASED BUDGETING

OPERATING	EDN	13,533.00*	13,612.00*
	EDN	551,756,899A	549,255,408A
	EDN	4,236,510B	4,505,770B
	EDN	75,837,893N	74,666,889N
	EDN	2,960,072T	2,960,072T
	EDN	986,658U	986,658U
	EDN		2,000,000W
INVESTMENT CAPITAL	AGS	90,325,000B	101,834,000B
	AGS	30,216,000C	28,193,000C
	EDN	150,000B	340,000B

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
2. EDN200 - INSTRUCTIONAL SUPPORT							
	OPERATING		EDN	384.50*		465.50*	
			EDN	23,090,762A		28,264,564A	
				2,467,035N		2,467,035N	
3. EDN300 - STATE AND DISTRICT ADMINISTRATION							
	OPERATING		EDN	521.00*		502.00*	
			EDN	29,875,271A		27,135,008A	
				1,259,544N		1,259,544N	
4. EDN400 - SCHOOL SUPPORT							
	OPERATING		EDN	1,416.60*		1,435.10*	
				69,259,524A		70,943,865A	
				720.50*		720.50*	
			EDN	16,089,953B		17,722,300B	
				3.00*		3.00*	
			EDN	22,530,456N		23,201,285N	
5. EDN500 - SCHOOL COMMUNITY SERVICE							
	OPERATING		EDN	39.50*		39.50*	
			EDN	20,233,113A		20,122,556A	
			EDN	653,642B		653,642B	
			EDN	976,109N		976,109N	
			EDN			200,000W	
6. AGS807 - PHYSICAL PLANT OPERATIONS & MAINTENANCE-AGS							
	OPERATING		AGS	238.00*		238.00*	
				34,370,260A		34,354,260A	
7. AGS808 - STUDENT TRANSPORTATION							
	OPERATING		AGS	10.00*		10.00*	
				18,327,378A		18,327,378A	
8. EDN407 - PUBLIC LIBRARIES							
	OPERATING		EDN	512.05*		512.05*	
			EDN	18,418,895A		18,418,895A	
			EDN	1,625,000B		1,625,000B	
			EDN	660,763N		660,763N	
	INVESTMENT CAPITAL		AGS	1,653,000C		1,566,000C	
			AGS			204,000N	
9. UOH100 - UNIVERSITY OF HAWAII, MANOA							
	OPERATING		UOH	3,609.34*		3,482.09*	
				174,136,800A		173,770,089A	
				61.25*		75.75*	
			UOH	55,078,014B		57,075,503B	
				78.06*		78.06*	
			UOH	5,411,667N		5,411,667N	
				133.75*		159.75*	
	INVESTMENT CAPITAL		UOH	44,622,809W		47,996,937W	
			AGS	8,169,000C		11,167,000C	
			AGS	3,375,000R			
			AGS	3,376,000W		400,000W	
			UOH	390,000B			
			UOH	600,000C		698,000C	
			UOH	15,926,000R			
10. UOH210 - UNIVERSITY OF HAWAII, HILO							
	OPERATING		UOH	324.00*		322.00*	
				18,186,511A		17,657,843A	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
				15.00*		15.00*	
			UOH	4,717,228B		6,840,557B	
			UOH	394,543N		394,543N	
				6.50*		10.50*	
		INVESTMENT CAPITAL	UOH	3,486,901W		3,595,506W	
			AGS	7,733,000C			
			AGS			1,230,000R	
			UOH			1,500,000N	
11.	UOH300	HONOLULU COMMUNITY COLLEGE					
	OPERATING			286.00*		282.00*	
			UOH	12,229,300A		12,079,145A	
				5.00*		5.00*	
			UOH	4,413,710B		4,545,710B	
			UOH	111,000N		111,000N	
				14.00*		14.00*	
		INVESTMENT CAPITAL	UOH	1,584,356W		1,728,356W	
			AGS	136,000C		2,502,000C	
12.	UOH310	KAPIOLANI COMMUNITY COLLEGE					
	OPERATING			298.10*		310.60*	
			UOH	12,786,495A		13,574,368A	
				18.00*		18.00*	
			UOH	6,581,272B		7,231,272B	
			UOH	91,020N		91,020N	
				6.00*		6.00*	
			UOH	2,200,174W		2,226,174W	
13.	UOH320	LEEWARD COMMUNITY COLLEGE					
	OPERATING			297.50*		290.50*	
			UOH	11,814,415A		11,528,652A	
				10.00*		10.00*	
			UOH	4,335,577B		4,980,577B	
			UOH	125,000N		125,000N	
				4.00*		4.00*	
			UOH	907,598W		1,042,598W	
14.	UOH330	WINDWARD COMMUNITY COLLEGE					
	OPERATING			103.40*		103.40*	
			UOH	4,195,349A		4,107,276A	
			UOH	1,135,331B		1,360,331B	
			UOH	19,907N		19,907N	
			UOH	234,929W		304,929W	
	INVESTMENT CAPITAL		AGS	6,221,000C		16,300,000C	
15.	UOH400	HAWAII COMMUNITY COLLEGE					
	OPERATING			121.50*		123.50*	
			UOH	5,439,255A		5,303,710A	
			UOH	1,550,000B		2,005,000B	
			UOH	70,000N		70,000N	
			UOH	503,447W		509,447W	
16.	UOH500	MAUI COMMUNITY COLLEGE					
	OPERATING			156.00*		154.00*	
			UOH	7,453,028A		7,033,918A	
				6.50*		6.50*	
			UOH	2,305,743B		2,764,743B	
			UOH	88,000N		88,000N	
				3.00*		3.00*	
			UOH	819,653W		839,653W	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		INVESTMENT CAPITAL	AGS	5,888,000C		9,549,000C	
17.		UOH600 - KAUAI COMMUNITY COLLEGE					
		OPERATING	UOH	140.00*		136.50*	
			UOH	5,724,782A		5,644,063A	
			UOH	1,443,389B		1,768,389B	
			UOH	36,000N		36,000N	
				2.00*		2.00*	
			UOH	495,301W		502,301W	
18.		UOH700 - UNIVERSITY OF HAWAII AT WEST OAHU					
		OPERATING	UOH	42.50*		42.50*	
			UOH	2,030,685A		1,936,054A	
			UOH	516,590B		804,090B	
			UOH	25,000W		25,000W	
		INVESTMENT CAPITAL	AGS	C		3,092,000C	
19.		UOH900 - UOH, SYSTEM WIDE SUPPORT					
		OPERATING	UOH	346.50*		342.00*	
			UOH	22,588,369A		22,085,829A	
				4.00*		4.00*	
			UOH	200,000B		200,000B	
				4.00*		4.00*	
			UOH	457,667N		457,667N	
				100.00*		100.00*	
			UOH	40,195,572W		41,379,604W	
		INVESTMENT CAPITAL	AGS	2,581,000C		247,000C	
			UOH	300,000C		2,458,000C	
			UOH	1,000R			
			UOH	500,000W			
20.		UOH906 - COMMUNITY COLLEGE SYSTEMWIDE SUPPORT					
		OPERATING	UOH	66.75*		66.75*	
			UOH	5,864,551A		6,340,665A	
				10.00*		10.00*	
			UOH	1,070,872B		3,420,872B	
				15.60*		15.60*	
			UOH	3,000,000N		3,000,000N	
			UOH	149,950W		149,950W	
<b>H. CULTURE AND RECREATION</b>							
1.		UOH881 - AQUARIA					
		OPERATING	UOH	13.00*		13.00*	
				665,402A		665,402A	
				7.00*		7.00*	
			UOH	1,318,689B		1,718,689B	
2.		CCA701 - HAWAII PUBLIC BROADCASTING					
		OPERATING	CCA	40.00*		38.00*	
			CCA	1,560,314A		1,379,957A	
				3,784,845W		3,888,982W	
3.		AGS881 - PERFORMING & VISUAL ARTS EVENTS					
		OPERATING	AGS	13.00*		11.00*	
				2,306,841A		2,199,112A	
				3.00*		5.00*	
			AGS	3,810,915B		3,995,876B	
			AGS	660,000N		680,000N	
			AGS	15,000R		15,000R	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		INVESTMENT CAPITAL	AGS			220,000C	
4.		AGS818 - ETHNIC GROUP PRESENTATIONS					
		OPERATING	AGS	1.00*		79,228A	
5.		LNR802 - HISTORIC PRESERVATION					
		OPERATING	LNR	13.00*		13.00*	
			LNR	607,710A		537,321A	
			LNR	19,000B		58,624B	
		INVESTMENT CAPITAL	LNR	421,100N		421,100N	
					C		
6.		LNR804 - FOREST RECREATION					
		OPERATING	LNR	38.00*		38.00*	
				1,316,359A		1,280,061A	
			LNR	3.00*		3.00*	
			LNR	495,506N		495,506N	
		INVESTMENT CAPITAL	LNR	150,000W		500,000W	
						20,000C	
7.		LNR805 - RECREATIONAL FISHERIES					
		OPERATING	LNR	7.00*		7.00*	
			LNR	158,038A		158,855A	
			LNR	37,000B		37,000B	
			LNR	375,676N		405,676N	
8.		LNR806 - PARK DEVELOPMENT AND OPERATION					
		OPERATING	LNR	116.00*		116.00*	
		INVESTMENT CAPITAL	LNR	5,537,884A		5,484,065A	
				700,000C		500,000C	
9.		LNR801 - OCEAN-BASED RECREATION					
		OPERATING	LNR	81.00*		88.00*	
			LNR	10,695,640B		9,613,931B	
			LNR	700,000N		700,000N	
		INVESTMENT CAPITAL	LNR	816,000B			
			LNR	300,000C			
10.		AGS889 - SPECTATOR EVENTS & SHOWS - ALOHA STADIUM					
		OPERATING	AGS	39.50*		39.50*	
		INVESTMENT CAPITAL	AGS	5,336,121B		4,942,121B	
				339,000B		5,152,000B	
11.		LNR807 - PARK INTERPRETATION					
		OPERATING	LNR	8.00*		8.00*	
		INVESTMENT CAPITAL	LNR	347,905B		347,905B	
						350,000B	
12.		LNR809 - PARKS ADMINISTRATION					
		OPERATING	LNR	10.00*		10.00*	
			LNR	518,258A		491,967A	
			LNR	285,201N		285,201N	
<b>I. PUBLIC SAFETY</b>							
1.		PSD402 - HALAWA CORRECTIONAL FACILITY					
		OPERATING	PSD	411.00*		409.00*	
			PSD	15,241,317A		15,219,879A	
				740,220W		814,242W	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		INVESTMENT CAPITAL	AGS			588,000C	
2.	PSD403	KULANI CORRECTIONAL FACILITY					
		OPERATING	PSD	80.00*		80.00*	
		INVESTMENT CAPITAL	AGS	3,235,365A		3,235,365A	
				1,435,000C			
3.	PSD404	WAIAWA CORRECTIONAL FACILITY					
		OPERATING	PSD	74.00*		73.00*	
			PSD	2,792,392A		2,778,609A	
		INVESTMENT CAPITAL	AGS	163,084W		179,392W	
						1,028,000C	
4.	PSD405	HAWAII COMMUNITY CORRECTIONAL CENTER					
		OPERATING	PSD	97.00*		167.00*	
				3,365,623A		5,279,222A	
5.	PSD406	MAUI COMMUNITY CORRECTIONAL CENTER					
		OPERATING	PSD	180.00*		180.00*	
			PSD	5,331,686A		5,654,368A	
			PSD	35,564S		57,000S	
6.	PSD407	OAHU COMMUNITY CORRECTIONAL CENTER					
		OPERATING	PSD	440.00*		448.00*	
			PSD	17,203,376A		17,541,891A	
		INVESTMENT CAPITAL	AGS	559,154W		615,069W	
				341,000C			
7.	PSD408	KAUAI COMMUNITY CORRECTIONAL CENTER					
		OPERATING	PSD	63.00*		63.00*	
				2,041,555A		2,265,176A	
8.	PSD409	WOMEN'S COMMUNITY CORRECTIONAL CENTER					
		OPERATING	PSD	76.00*		109.00*	
		INVESTMENT CAPITAL	AGS	3,237,344A		4,299,671A	
				624,000C		200,000C	
9.	PSD410	INTAKE SERVICE CENTERS					
		OPERATING	PSD	37.00*		39.00*	
				1,593,811A		1,642,868A	
10.	PSD420	CORRECTION PROGRAM SERVICES					
		OPERATING	PSD	159.50*		170.50*	
				12,192,932A		13,217,945A	
11.	PSD421	HEALTH CARE OFFICE					
		OPERATING	PSD	134.93*		139.93*	
				8,124,583A		8,287,745A	
12.	PSD501	PROTECTIVE SERVICES					
		OPERATING	PSD	95.50*		95.50*	
			PSD	4,037,530A		4,130,410A	
			PSD	29,890N		29,890N	
			PSD	13.00*		13.00*	
				1,312,680U		1,312,680U	
13.	PSD502	NARCOTICS ENFORCEMENT					
		OPERATING	PSD	12.00*		12.00*	
				487,473A		487,473A	
						*	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
			PSD				B
14.	PSD503	SHERIFF					
	OPERATING		PSD	142.00* 4,181,436A		142.00* 4,244,436A	
15.	PSD504	MARITIME LAW ENFORCEMENT					
	OPERATING		PSD	2.00* 746,967A 45.00* 2,025,277U			* A * U
16.	PSD611	ADULT PAROLE DETERMINATIONS					
	OPERATING		PSD	2.00* 198,223A		2.00* 198,223A	
17.	PSD612	ADULT PAROLE SUPERVISION & COUNSELING					
	OPERATING		PSD	42.00* 1,541,325A		42.00* 1,541,325A	
18.	PSD613	CRIMINAL INJURIES COMPENSATION					
	OPERATING		PSD	6.00* 241,225A		6.00* 241,225A	
19.	PSD900	GENERAL ADMINISTRATION					
	OPERATING		PSD	140.10* 9,795,938A 25,065T 9.00* 8,026,000W 742,980X 494,000C		140.10* 13,971,584A 25,065T 9.00* 9,488,458W 742,980X	
20.	ATG231	STATE CRIMINAL JUSTICE INFO & IDENTIFICATION					
	OPERATING		ATG	36.00* 1,582,714A 1.00* 19,920W		36.00* 1,586,057A 1,000,000N 1.00* 219,920W	
21.	LNR810	PREVENTION OF NATURAL DISASTERS					
	OPERATING		LNR	2.00* 145,266A 40,000N		2.00* 118,131A 40,000N	
22.	DEF110	AMELIORATION OF PHYSICAL DISASTERS					
	OPERATING		DEF	121.05* 6,596,645A 31.95* 4,778,134N 1,267,000C 502,000N 600,000C 500,000N		120.55* 6,454,446A 32.45* 5,196,639N 1,667,000C 7,400,000N 19,500,000N	

## J. INDIVIDUAL RIGHTS

1.	AGR810	TESTING & CERTIFICATION OF CONSUMER GOODS					
	OPERATING		AGR	* 261,013A		* A	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
			AGR	700,000N	*		*N
2.	CCA102 - CABLE TELEVISION						
	OPERATING		CCA	2.00* 706,334X		2.00* 721,056X	
3.	CCA103 - CONSUMER ADVOCATE FOR COMM, UTIL & TRANS SVC						
	OPERATING		CCA	20.00* 2,075,522U		20.00* 2,075,522U	
4.	CCA104 - FINANCIAL INSTITUTION SERVICES						
	OPERATING		CCA	21.00* 1,110,075A		19.00* 844,105A	
			CCA	5.00* 450,000W		7.00* 578,681W	
5.	CCA105 - PROFESSIONAL, VOCATIONAL & PERSONAL SVCS						
	OPERATING		CCA	58.00* 3,773,540B		59.00* 3,891,955B	
			CCA	1,770,716T		1,782,759T	
6.	BUF901 - TRANSPORTATION, COMMUNICATIONS, & UTILITIES						
	OPERATING		BUF	44.00* 5,652,234B		44.00* 5,529,993B 5,229,993B <sup>1</sup>	
7.	CCA106 - INSURANCE SERVICES						
	OPERATING		CCA	29.00* 1,145,917A		26.00* 984,009A	
			CCA	1,424,160B		1,630,006B	
			CCA	133,130T		135,518T	
			CCA	14.00* 3,332,562W		18.00* 3,422,753W	
8.	CCA110 - OFFC OF CONSUMER PROT - UNFAIR/DECEP PRAC						
	OPERATING		CCA	15.00* 670,231A		14.00* 568,307A	
			CCA	10,320T		10,681T	
9.	AGR812 - MEASUREMENT STANDARDS						
	OPERATING		AGR	20.00* 712,277A		20.00* 671,446A	
10.	CCA111 - BUSINESS REGISTRATION						
	OPERATING		CCA	57.00* 3,601,249B		59.00* 5,111,573B	
11.	CCA112 - REGULATED INDUSTRIES COMPLAINTS OFFICE						
	OPERATING		CCA	10.00* 401,350A		9.00* 328,579A	
			CCA	4.00* 5,000,621B		6.00* 5,151,178B	
12.	CCA191 - GENERAL SUPPORT-PROTECTION OF THE CONSUMER						
	OPERATING		CCA	30.00* 1,733,170A		25.00* 1,620,307A	
			CCA	1,409,969B		1.00* 1,576,822B	
13.	BUF151 - LEGAL ASSISTANCE IN CRIMINAL ACTIONS						



## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
	OPERATING		BUF	82.00* 6,499,891A		82.00* 6,581,725A	
14.	LNR111	- CONVEYANCES AND RECORDINGS					
	OPERATING		LNR	49.00* 1,793,225A		49.00* 1,750,293A	
			LNR	4.00* 143,768U		4.00* 143,768U	
15.	HMS888	- COMMISSION ON THE STATUS OF WOMEN					
16.	LTG888	- COMMISSION ON THE STATUS OF WOMEN					
	OPERATING		LTG	1.00* 100,788A		1.00* 100,788A	
<b>K. GOVERNMENT-WIDE SUPPORT</b>							
1.	GOV100	- OFFICE OF THE GOVERNOR					
	OPERATING		GOV	34.00* 2,812,629A		38.00* 3,692,942A	
	INVESTMENT CAPITAL		GOV	1,000C		1,000C	
2.	LTG100	- OFFICE OF THE LIEUTENANT GOVERNOR					
	OPERATING		LTG	11.00* 3,272,535A		11.00* 2,911,609A	
3.	GOV102	- GOV - OTH POLICY DEVELOPMENT & COORDINATION					
	OPERATING		GOV	8.00* 1,827,547A		4.00* 276,260A	
4.	GOV103	- STATEWIDE PLAN AND COORDINATION					
	OPERATING		GOV	21.00* 2,273,039A			*
			GOV	4.00* 778,190N			A
							*
							N
5.	BED103	- LAND USE AND COASTAL MANAGMENT					
	OPERATING		BED	7.00* 445,569A		7.00* 429,148A	
6.	BED104	- HAWAII COMMUNITY DEVELOPMENT AUTHORITY					
	OPERATING		BED	2.00* 144,193A		2.00* 121,756A	
	INVESTMENT CAPITAL		BED	3,300,000B		3,300,000B	
			BED	4,550,000C		2,050,000C	
			BED	5,001,000E			
						257,000W	
7.	BUF101	- BUF - PRGM PLANNG, ANALYSIS & BUDGETING					
	OPERATING		BUF	62.00* 188,323,953A		60.00* 199,053,383A	
	INVESTMENT CAPITAL		AGS	3,000,000C			
8.	LTG101	- CAMPAIGN SPENDING COMMISSION					
	OPERATING		LTG	4.00* 198,812A		4.00* 207,812A	
			LTG	100,000T		4,000,000T	
9.	TAX102	- INCOME ASSESSMENT AND AUDIT					
				114.00*		114.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
	OPERATING		TAX	4,096,335A		4,084,593A	
10.	TAX103 - TAX COLLECTIONS ENFORCEMENT			95.00*		95.00*	
	OPERATING		TAX	2,928,810A		2,891,494A	
11.	TAX105 - TAX SERVICES & PROCESSING			90.00*		90.00*	
	OPERATING		TAX	4,856,065A		4,840,507A	
12.	TAX107 - SUPPORTING SERVICES - REVENUE COLLECTION			50.00*		50.00*	
	OPERATING		TAX	6,654,849A		4,135,257A	
13.	AGS101 - ACCT SYSTEM DEVELOPMENT & MAINTENANCE			7.00*		6.00*	
	OPERATING		AGS	336,283A		3,017,023A	
14.	AGS102 - EXPENDITURE EXAMINATION			17.00*		17.00*	
	OPERATING		AGS	810,795A		795,827A	
15.	AGS103 - RECORDING AND REPORTING			12.00*		12.00*	
	OPERATING		AGS	489,160A		476,948A	
16.	AGS104 - INTERNAL POST AUDIT			13.00*		13.00*	
	OPERATING		AGS	1,060,198A		1,060,198A	
17.	BUF115 - FINANCIAL ADMINISTRATION DIVISION			19.00*		18.00*	
	OPERATING		BUF	425,495,280A		430,912,825A	
			BUF	6,470,000T		6,980,000T	
			BUF	5,525U		5,525U	
18.	ATG100 - LEGAL SERVICES			205.76*		201.76*	
	OPERATING		ATG	14,527,485A		14,736,922A	
			ATG	184,296B		265,771B	
			ATG	12.00*		12.00*	
			ATG	4,316,618N		5,113,572N	
			ATG	3,318,000T		3,318,000T	
			ATG	41.24*		40.24*	
			ATG	4,069,698U		5,212,219U	
			ATG	3,000,000W		3,000,000W	
19.	BUF131 - ELECTRONIC DATA PROCESSING SERVICES			169.00*		166.00*	
	OPERATING		BUF	11,022,356A		10,615,528A	
			BUF	33.00*		33.00*	
			BUF	1,586,231U		1,805,081U	
20.	BUF161 - COMMUNICATION			8.00*		8.00*	
	OPERATING		BUF	3,927,296A		3,555,389A	
			BUF	1,292,189U		1,250,000U	
	INVESTMENT CAPITAL		AGS	318,000C		172,000C	

## PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
21.	BUF162 - HAWAII INFORMATION NETWORK CORP.						
22.	HRD102 - WORK FORCE ATTRACTION, SELECTION, CLASSIFICATION AND EFF.						
	OPERATING		HRD	126.00*		126.00*	
			HRD	21,021,109A		24,900,502A	
			HRD	1,423,651U		1,708,381U	
			HRD	415,694W		415,694W	
23.	HRD191 - SUPPORTING SERVICES-PERSONNEL SERVICES						
	OPERATING		HRD	13.00*		13.00*	
				1,092,137A		1,057,367A	
24.	BUF141 - RETIREMENT						
	OPERATING		BUF	267,823,914A		290,698,578A	
				45.00*		51.00*	
			BUF	2,857,925X		3,289,371X	
25.	BUF142 - HEALTH & LIFE INSURANCE BENEFITS						
	OPERATING		BUF	15.00*		15.00*	
			BUF	613,484A		604,796A	
			BUF	316,420,000T		372,098,000T	
26.	LNR101 - PUBLIC LANDS MANAGEMENT						
	OPERATING		LNR	34.00*		34.00*	
				1,201,923A		1,076,641A	
						1.00*	
	INVESTMENT CAPITAL		LNR	1,248,000B		1,345,689B	
			LNR	2,016,000B		957,000B	
			LNR			300,000C	
27.	AGS203 - RISK MANAGEMENT						
	OPERATING		AGS	3.00*		3.00*	
			AGS	5,506,050A		4,098,538A	
			AGS	11,590,000W		7,825,000W	
28.	AGS211 - LAND SURVEY						
	OPERATING		AGS	18.00*		18.00*	
				667,575A		590,481A	
29.	AGS223 - OFFICE LEASING						
	OPERATING		AGS	4.00*		4.00*	
			AGS	19,304,594A		17,247,005A	
			AGS	5,500,000U		5,500,000U	
30.	AGS221 - CONSTRUCTION						
	OPERATING		AGS	19.00*		19.00*	
			AGS	983,285A		960,984A	
			AGS	4,000,000W		4,000,000W	
	INVESTMENT CAPITAL		AGS	11,287,000C		7,191,000C	
			BED	C			
31.	AGS231 - CUSTODIAL SERVICES						
	OPERATING		AGS	143.50*		143.50*	
			AGS	7,966,202A		7,966,582A	
			AGS	430,501U		430,501U	
32.	AGS232 - GROUNDS MAINTENANCE						
	OPERATING		AGS	27.00*		27.00*	
				861,467A		847,259A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
33.	AGS233	BUILDING REPAIRS AND ALTERATIONS					
	OPERATING		AGS	28.00*		28.00*	
				2,499,884A		2,493,101A	
34.	AGS240	CENTRAL PURCHASING					
	OPERATING		AGS	16.00*		19.00*	
				518,495A		794,884A	
35.	AGS244	SURPLUS PROPERTY MANAGEMENT					
	OPERATING		AGS		A		A
				4.00*		5.00*	
			AGS	222,328W		264,635W	
36.	AGS251	MOTOR POOL					
	OPERATING		AGS	12.50*		12.50*	
				1,261,647W		1,252,856W	
37.	AGS252	PARKING CONTROL					
	OPERATING		AGS	20.50*		20.50*	
				3,011,813W		2,754,132W	
38.	AGS111	RECORDS MANAGEMENT					
	OPERATING		AGS	22.00*		22.00*	
				622,779A		581,617A	
39.	AGS901	GENRL ADM SVCS - ACCOUNTING & GENERAL SVCS					
	OPERATING		AGS	46.00*		42.00*	
				1,969,541A		1,652,983A	
			AGS			1.00*	
			AGS			43,444U	
						11,257,500W	
40.	SUB201	CITY AND COUNTY OF HONOLULU					
	OPERATING		SUB	1,267,680A		1,267,680A	
	INVESTMENT CAPITAL		CCH	2,450,000C		3,550,000C	
41.	SUB301	COUNTY OF HAWAII					
	OPERATING		SUB	781,928A		781,928A	
	INVESTMENT CAPITAL		COH	1,600,000C		25,000C	
42.	SUB401	COUNTY OF MAUI					
	OPERATING		SUB	637,832A		477,832A	
	INVESTMENT CAPITAL		COM	2,000,000C		500,000C	
43.	SUB501	COUNTY OF KAUAI					
	OPERATING		SUB	298,632A		298,632A	
	INVESTMENT CAPITAL		COK			440,000C	

SECTION 4. Part III, Act 218, Session Laws of Hawaii 1995, is amended:

- (1) By repealing section 5.
- (2) By amending section 9 to read as follows:

“SECTION 9. Provided that of the general fund appropriation for state tourism office (BED 113), the sum of [\$25,000,000] \$23,000,000 for fiscal year 1995-1996 and the sum of \$25,000,000 for fiscal year 1996-1997 shall be expended

for marketing, promoting, and advertising Hawaii by the Hawaii visitors bureau; provided further that of the general fund appropriation to the Hawaii visitors bureau from the state tourism office (BED 113):

- (1) The amount expended for salaries, benefits, and related taxes, and office rent for the Hawaii visitors bureau shall not exceed \$3,500,000 for fiscal year 1995-1996 and shall not exceed \$3,500,000 for fiscal year 1996-1997;
- (2) The sum of [\$200,000] \$150,000 for fiscal year 1995-1996 and the sum of \$200,000 for fiscal year 1996-1997 shall be expended for co-production costs of locally produced programming which achieve international recognition, and can service multiple tourism, marketing, and income-producing objectives; provided further that the Hawaii public broadcasting authority shall be the expending agency; and provided further that the Hawaii public broadcasting authority shall submit a report on the expenditure of these funds to the legislature no later than twenty days prior to the convening of the 1996 and 1997 regular sessions;
- (3) The sum of \$1,576,575 for fiscal year 1995-1996 and the sum of \$1,765,404 for fiscal year 1996-1997 shall be used for pro bowl advertising, marketing, and promotion by the Hawaii visitors bureau; and provided further that a report on the expenditure of funds shall be submitted to the legislature no later than twenty days prior to the convening of the 1996 and 1997 regular sessions;
- (4) The sum of \$1,000,000 for fiscal year 1995-1996 and the sum of \$1,000,000 for fiscal year 1996-1997 shall be used by the Hawaii visitors bureau for marketing, promoting, and advertising the new convention center;
- (5) The sum of [\$850,000] \$600,000 for fiscal year 1995-1996 and the sum of [\$850,000] \$1,145,000 for fiscal year 1996-1997 shall be used for sports promotion activities as follows:

	<u>FY 1995-1996</u>	<u>FY 1996-1997</u>
Honolulu Marathon	[\$ 50,000] \$ 0	\$ 50,000
Senior Skins	[\$ 200,000] \$ 150,000	\$ 200,000
Lincoln Mercury Kapalua International	[\$ 200,000] \$ 150,000	\$ 200,000
Kaanapali Classic	[\$ 200,000] \$ 150,000	\$ 200,000
PGA Grand Slam of Golf	[\$ 200,000] \$ 150,000	\$ 200,000
<u>Winter League Baseball</u>		<u>\$ 275,000</u>
<u>Royal Hawaiian Rowing Challenge</u>		<u>\$ 20,000</u>

provided further that the following conditions shall apply to the above events;

- (a) No funds shall be made available for the above events unless matched on a dollar-for-dollar basis by private sources;
- (b) Any unexpended and unencumbered funds shall be returned to the state general fund; and
- (c) Each of the above shall promote, market, or advertise Hawaii as a visitor destination;

and provided further that no other funds of the general fund appropriation to the Hawaii visitors bureau shall be used for sports promotion;

- (6) The sum of \$100,000 for fiscal year 1995-1996 and the sum of \$100,000 for fiscal year 1996-1997 shall be expended for the Hawaii international film festival; and provided further that no funds shall be made available unless matched on a dollar-for-dollar basis by private funds;
- (7) A minimum of \$3,500,000 shall be expended in fiscal year 1995-1996 and a minimum of \$3,500,000 shall be expended in fiscal year 1996-1997 for island chapter marketing;
- (8) The sum of \$5,000,000 for fiscal year 1995-1996 and the sum of \$5,000,000 for fiscal year 1996-1997 shall be used to implement a marketing strategy based on the following types of media and pre-determined ratios:
  - (a) The sum of \$2,650,000 for fiscal year 1995-1996 and the sum of \$2,650,000 for fiscal year 1996-1997 shall be used for branding a category based on the medium of television which lends itself to the establishment of Hawaii as a preferred destination and which is designed to attract large advertisers such as airlines or travel cards on a 2:1 state to private ratio;
  - (b) The sum of \$2,350,000 for fiscal year 1995-1996 and the sum of \$2,350,000 for fiscal year 1996-1997 shall be matched on a 1:1 state to private ratio;

provided further that these ratios represent the minimum level of private funds required to match state funds; and provided further that a report detailing the expenditure of funds shall be submitted to the legislature no later than twenty days prior to the convening of the 1996 and 1997 regular sessions.”

- (3) By adding a new section to read as follows:

“SECTION 12.1. Provided that of the general fund appropriation for agricultural research and coordination (AGR 161), the sum of \$743,000 for fiscal year 1996-1997 shall be expended on the following:

	<u>FY 1996-1997</u>
Ornamental nursery research	\$ 10,000
Hawaii cut flower industry marketing	\$ 30,000
Taro research	\$ 10,000
Yellow sugarcane aphid research	\$ 25,000
Coffee research	\$ 25,000
Macadamia research	\$ 30,000
Papaya research	\$ 5,000
Anthurium research	\$ 50,000
Livestock waste management	\$ 40,000
State farm fair	\$ 50,000
Plant alien pest program	\$ 68,000
Vegetable crop research	\$ 80,000
Fruit fly post harvest treatment and research	\$ 120,000
Pineapple research	\$ 200,000

provided further that:

- (1) The department of agriculture shall submit an itemized report which shall include, but not be limited to, the progress being made with each specific commodity that is funded for research, and projected funding,

if necessary, for the continuation of each of the research projects with justification for recommended funding in future years; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1997 regular session;

- (2) The department of agriculture shall support efforts to seek and obtain grants and other funds for agricultural research and development;
- (3) The chairperson of the board of agriculture shall expedite all projects under this section, especially emergency actions; and
- (4) The sums appropriated shall be expended by the department of agriculture for the purposes of this Act; provided that:
  - (a) The department of agriculture may require that any funds made available under this Act be matched by private funds; and
  - (b) The department of agriculture is authorized to transfer funds between appropriations under this section or to other projects or commodities as deemed necessary by the department of agriculture."

- (4) By adding a new section to read as follows:

"SECTION 12.2. Provided that of the high technology development corporation special fund appropriation for high technology development corporation (BED 143), the sum of \$70,000 for fiscal year 1996-1997 shall be used for the operation of a library at the Maui research and technology center through a contract with the Maui economic development board; and provided further that a report shall be submitted to the legislature no later than twenty days prior to the convening of the 1997 regular session."

- (5) By amending section 13 to read as follows:

"SECTION 13. Provided that of the general fund appropriation for the school to work transition center program (LBR 136), the sum of [\$490,759] \$460,099 for fiscal year 1995-1996 and the sum of [\$490,759] \$0 for fiscal year 1996-1997 shall be used for the quick kokua - Farrington and Waianae programs."

- (6) By amending section 14 to read as follows:

"SECTION 14. Provided that of the general fund appropriation for unemployment compensation (LBR 171), the sum of \$4,501,534 for fiscal year 1995-1996 and the sum of [\$4,501,534] \$8,501,534 for fiscal year 1996-1997 shall be used to cover unemployment compensation claims of former state employees; provided further that any remaining funds shall lapse into the general funds; and provided further that the department shall submit a detailed report of all expenditures for such claims no later than twenty days prior to the convening of the 1996 and 1997 regular sessions."

- (7) By amending section 19 to read as follows:

"SECTION 19. Provided that of the special fund appropriation for airports administration (TRN 195), the sum of [\$261,437,136] \$290,647,979 for the fiscal biennium 1995-1997 shall be used for only the following purposes:

<u>Purpose</u>	<u>FY 1995-1996</u>	<u>FY 1996-1997</u>
Interest and Principal on General Obligation Bonds	\$ 3,288,180	\$ 593,589
Interest and Principal on Revenue Bonds	[\$128,823,277] \$168,730,777	[\$128,732,090] \$118,035,433

and provided further that any funds not used for this purpose shall be lapsed into the airports revenue fund.”

(8) By adding a new section to read as follows:

“SECTION 28.1. Provided that of the general fund appropriation for STD/AIDS prevention services (HTH 121) for fiscal year 1996-1997, \$400,000 shall be used to restore executive restrictions placed on purchase of services.”

(9) By amending section 30 to read as follows:

“SECTION 30. Provided that of the general fund appropriation for Hawaii state hospital (HTH 430), [all appropriated positions shall be fully funded by] the department of health[; provided further that to] shall fully comply with mandates by the United States department of justice[, the department of health shall fill all currently vacant positions within the Hawaii state hospital]; provided further that the department of human resources development shall assist the department of health towards this end by recruiting for all positions statewide; provided further that upon the filling of these positions, no further funds shall be expended for public health nursing contracts other than those required to meet emergency mandates; and provided further that the department of health shall submit a report detailing the status of all positions and efforts to fill vacancies to the legislature no later than twenty days prior to the convening of the [1996] 1997 regular session.”

(10) By repealing section 31.

(11) By adding a new section to read as follows:

“SECTION 31.1. Provided that of the general funds appropriation for alcohol and drug abuse (HTH 440) for fiscal year 1996-1997, \$300,000 shall be used to restore executive restrictions placed on purchase of services.”

(12) By amending section 33 to read as follows:

“SECTION 33. Provided that to ensure the continuing receipt of federal funding for the Hawaii ohana project in child and adolescent mental health (HTH 460), the department of health shall work to expedite the execution of the grant; provided further that the department shall provide all available resources necessary to facilitate the expenditure of grant moneys; provided further that the department shall submit to the legislature a report detailing the status of the Hawaii ohana project and the progress of the grant in establishing a community-based care model for the provision of mental health services; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the [1996] 1997 regular session.”

(13) By repealing section 34.

(14) By amending section 36 as follows:



“SECTION 36. Provided that of the general fund appropriation for developmental disabilities (HTH 501), the sum of [\$400,000 or] \$1,500,000 and that amount that is excessive due to deinstitutionalization and savings for fiscal year 1995-1996 and fiscal year 1996-1997 may be used for purchase of services, matching funds for Title XIX Medicaid community-based programs, or to establish small community ICF/MR's.”

- (15) By repealing section 38.
- (16) By repealing section 39.
- (17) By adding a new section to read as follows:

“SECTION 40.1. Provided that of the general fund appropriation for services to veterans (DEF 112), the sum of \$34,200 for fiscal year 1996-1997 shall be used solely for operation and maintenance of the West Hawaii veterans cemetery.”

- (18) By amending section 41 to read as follows:

“SECTION 41. Provided that [of] the matching federal fund appropriation received for the thirteenth month of payment for [each fiscal year of the fiscal biennium 1995-1997] fiscal year 1995-1996 for payments to assist families with dependent children (HMS 201) shall be returned to the general fund.”

- (19) By adding a new section to read as follows:

“SECTION 41.1. Provided that of the general fund appropriation for payments to assist families with dependent children (HMS 201), the department may transfer funds, as needed, to other general assistance payments (HMS 204) to fund families eligible for the aid to families with dependent children program; and provided further that the department shall submit a report to the legislature on all such transfers no later than twenty days prior to the convening of the 1997 regular session.”

- (20) By repealing section 43.
- (21) By adding a new section to read as follows:

“SECTION 44.1. Provided that health care payments (HMS 230) shall conduct a study on various drug therapies in the treatment of patients in the Med-QUEST program; provided further that the scope of the study shall include, but not be limited to the following requirements:

- (1) A detailed clinical analysis of the health care benefits of various drug treatments;
- (2) An economic analysis of the health care savings of various drug treatments;
- (3) An analysis of the quality and scope of various drug treatments which are currently prescribed, including, but not limited to, more expensive treatments; and
- (4) An examination of alternatives which will make additional funds available for the purchase of various drug therapies;

provided further that this study shall not focus on one type of drug treatment; provided further that this study shall include drug treatments which vary from the current costs of the prescribed generic agents; and provided further that the department of human services shall submit results of the study to the legislature no later than twenty days prior to the convening of the 1997 regular session.”

(22) By adding a new section to read as follows:

“SECTION 44.2. Provided that for the first to work program in eligibility determination (HMS 236), the department of human services shall submit to the legislature a detailed report of program effectiveness indicators which shall include, but are not limited to, the number of clients entering and exiting the program, average and median client wage received at exit from the program, average wages for clients while in the program, cost analysis of exits, and monthly count of clients in the program; provided further that the information shall be provided for each first to work unit; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1997 regular session.”

(23) By repealing section 45.

(24) By adding a new section to read as follows:

“SECTION 45.1. Provided that of the appropriation for general administration (DSSH) (HMS 904), the general fund amount of \$958,607 and the federal fund amount of \$312,282 shall be expended for personal services for thirty-six FTE positions for the evaluation office (HMS 904/AD) for fiscal year 1996-1997.”

(25) By repealing section 47.

(26) By amending section 49 to read as follows:

“SECTION 49. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$5,172,525 for fiscal year 1995-1996 and the sum of [\$5,174,957] \$3,103,515 for fiscal year 1996-1997 shall be expended for special needs schools (EDN 100/BP).”

(27) By amending section 50 to read as follows:

“SECTION 50. Provided that for school-based budgeting (EDN 100), [no less than] the sum of \$2,640,089 for fiscal year 1995-1996 and [no less than] the sum of [\$2,640,260] \$2,488,751 for fiscal year 1996-1997 shall be used for the parent-community networking center program (EDN 100/CI); provided further that for schools participating in the parent-community networking center program that do not have a paid facilitator position, each school may expend their funds for the parent-community networking center program for stipends, equipment, or for other purposes consistent with the aims of the parent-community networking center program.”

(28) By adding a new section to read as follows:

“SECTION 50.1. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the department of education shall not reduce funds from existing programs and services in order to fund programs and initiatives not specifically authorized by the legislature or workload increases not directly attributable to unanticipated enrollment increases.”

(29) By adding a new section to read as follows:

“SECTION 50.2. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$838,911 for fiscal year 1996-1997 shall be used for the middle-level education program.”

(30) By adding a new section to read as follows:

“SECTION 50.3. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$106,000 for fiscal year 1996-1997 shall be used for purchase of services for comprehensive education - Hawaii district drop-out prevention; and provided further that the sum of \$215,251 for fiscal year 1996-1997 shall be used for purchase of services for language arts multicultural program.”

(31) By amending section 51 to read as follows:

“SECTION 51. Provided that of the general fund appropriation for [school based budgeting] instructional support (EDN 200), the sum of [\$157,912] \$80,445 for fiscal year 1995-1996 and the sum of [\$157,912] \$80,445 for fiscal year 1996-1997 shall be expended for graduate level outreach programs on the island of Kauai.”

(32) By amending section 57 to read as follows:

“SECTION 57. Provided that of the general fund appropriation for school community service (EDN 500), [a minimum] the sum of \$17,010,794 for fiscal year 1995-1996 and [a minimum] the sum of [\$17,010,794] \$15,000,000 for fiscal year 1996-1997 shall be expended for the A + afterschool program; provided further that in addition to developing attendance formulae for program participants eligible for federal reimbursement, the department of education shall work with the department of human services to calculate eligible facilities and support services costs for reimbursement; provided further that the department of education shall prepare a report reflecting the total number of enrollees, as well as facilities and support services costs for the A + afterschool program that are eligible for federal reimbursement; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1996 regular session.”

(33) By amending section 63 to read as follows:

“SECTION 63. Provided that in order to [meet staffing requirements for the provision of] provide services pursuant to the Felix v. Waihee consent decree, the department of education is authorized to establish and fill thirty-nine permanent behavioral management resource teachers; provided further that thirty of these positions shall be created through the reclassification of existing resource teacher positions; provided further that the remaining nine positions shall be funded through savings resulting from the early retirement incentive plan, Act 212, Session Laws of Hawaii 1994; and provided further that the establishment of these positions shall count toward the requirements of Act 272, Session Laws of Hawaii 1994, requiring the transfer of positions to learning support centers.”

(34) By amending section 64 to read as follows:

“SECTION 64. Provided that [for the department of education all funds shall be allocated as appropriated by the legislature; provided further that] the department [shall retain the right to] of education may transfer allocated resources to accommodate unforeseen circumstances including, but not limited to:

- (1) Payment of salaries;
- (2) Fulfillment of contractual obligations;
- (3) Matching requirements, or other requirements, associated with the securing and retention of federal funds; and

(4) Addressing immediate emergency health and safety requirements; provided further that the department of education, if necessary under the provisions of this section, shall transfer allocated resources from EDN 200, EDN 300, EDN 400, and EDN 500; and provided further that the department of education shall submit a report of all such transfers to the legislature no later than twenty days prior to the convening of the 1996 and 1997 regular sessions.”

(35) By adding a new section to read as follows:

“SECTION 66.1. Provided that the department of education, the department of human services, and the department of health shall develop and implement interagency working agreements regarding services provided to children: (1) under special education programs and (2) through school-based health centers; provided further that these agreements shall clearly delineate the responsibilities of each department as to the services provided to these populations; provided further that in instances where these services qualify for federal reimbursements, the department of education, the department of health, and the department of human services shall develop methods to pursue such reimbursements; provided further that the department of education, the department of health, and the department of human services shall each submit certified reports which shall include, but not be limited to, the following information:

- (1) The nature of the working agreements pertaining to special education and school-based health services between the department of education, the department of health, and the department of human services;
- (2) Services provided by each of the departments, including, but not limited to, population identification, referrals, diagnostic and assessment services, development of treatment plans, treatment, and follow-up evaluations;
- (3) Personnel to be used to provide these services, including, but not limited to, information pertaining to qualifications, training, composition of treatment teams, and staffing levels;
- (4) Facilities to be used to provide services, including, but not limited to, information pertaining to the parties responsible for providing facilities, and for the determining of appropriate levels of equipment for these facilities;
- (5) Standards and procedures contained in the agreements, including, but not limited to, interagency coordination, lines of authority, and areas of responsibility and accountability; and
- (6) A listing of current services and funding provided for children receiving services: (1) under special education programs and (2) through school-based health centers, that qualify for federal reimbursement;

and provided further that the departments shall each submit these reports to the legislature no later than twenty days prior to the convening of the 1997 regular session.”

(36) By adding a new section to read as follows:

“SECTION 72.1. Provided that the office of the auditor shall perform a management audit of all non-instructional positions at the university of Hawaii, Manoa (UOH 100); provided further that the report shall include, but not be limited to, a cost benefit analysis of the centralization vs. decentralization of all fiscal, personnel, and clerical positions; and provided further that the office of the auditor shall provide the study to the legislature no later than twenty days prior to the convening of the 1997 regular session.”

(37) By amending section 76 to read as follows:

“SECTION 76. Provided that of the general fund appropriation for community colleges, systemwide support (UOH 906), [a minimum of \$200,000 for fiscal year 1995-1996 and a minimum] the sum of \$200,000 for fiscal year 1996-1997 shall be used to cover operating budget shortages in instructional funds at the community college campuses; and provided further that systemwide support shall submit a detailed expenditure and status report to the legislature no later than twenty days prior to the convening of the [1996 and] 1997 regular session[s].”

(38) By adding a new section to read as follows:

“SECTION 76.1. Provided that of the \$350,000 revolving fund appropriation in the wildlife revolving fund for forest recreation (LNR 804), the sum of \$100,000 for fiscal year 1996-1997 shall be expended for the development of game management areas on the island of Hawaii.”

(39) By adding a new section to read as follows:

“SECTION 76.2. Provided that of the general fund appropriation for park development and operation (LNR 806), the sum of \$100,000 for fiscal year 1996-1997 shall be used for grants-in-aid for the Hawaii nature center and the sum of \$100,000 for fiscal year 1996-1997 shall be used for grants-in-aid for the Mo'okini Luakini foundation.”

(40) By adding a new section to read as follows:

“SECTION 77.1. Provided that the department of public safety shall conduct a comprehensive review of security staffing needs at Oahu community correctional center (PSD 407); provided further that such review shall contain analysis and assessment of overtime management, overtime costs, plans and implementation procedures to reduce overtime costs, staffing requirements, and current staffing levels; and provided further that the department shall submit a report of findings and recommendations to the legislature no later than twenty days prior to the convening of the 1997 regular session.”

(41) By adding a new section to read as follows:

“SECTION 80.1. Provided that of the special fund appropriation for the public utilities commission in transportation, communications, & utilities (BUF 901), an amount not to exceed the sum of ~~\$300,000~~ \$0<sup>1</sup> for fiscal year 1996-1997 shall be expended to hire a private consultant, selected by the office of the auditor, to review the issue of the overheading versus undergrounding of utility lines including appropriate criteria; provided further that this report shall include, but not be limited to:

- (1) An examination of other states' requirements and programs;
- (2) A comparison and evaluation of all related costs, to include:
  - (a) Amortized cost over the usable life;
  - (b) Amortized cost of maintenance over the useful life;
  - (c) Cost of disruption of services and repair arising from natural disasters;
  - (d) Cost associated with traffic and other accidents;

- (3) An evaluation of the funding mechanisms available to pay for undergrounding of utility facilities, should the report indicate that the use of such facilities is more cost efficient and beneficial;
- (4) An examination of the issues involving the health and welfare of the general population, to include:
  - (a) The potential or actual impact on the public health and welfare from electromagnetic field (EMF) radiation;
  - (b) Cost of liability insurance and the longterm liability exposure arising from continued overhead line EMF radiation emission;
- (5) A review of related issues, to include:
  - (a) The impact to Hawaii's tourism industry and other industries reliant on Hawaii's natural beauty;
  - (b) The impact on the health and welfare of Hawaii's residents from the continued erosion of Hawaii's natural resources resulting from overhead facilities; and
- (6) An examination of alternatives and recommendations where appropriate;

provided further that the final scope and requirements of this evaluation shall be determined by the office of the auditor; provided further that the office of the auditor shall administer the contract; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 1997 regular session."

(42) By amending section 82 to read as follows:

"SECTION 82. Provided that of the general fund appropriation for the office of the governor (GOV 100), the sum of \$14,031 for fiscal year 1995-1996 and the sum of \$14,031 for fiscal year 1996-1997 shall be used for the governor's contingency fund, which may be transferred to other programs and agencies [and allotted,] with the approval of the governor, for [unexpected or unforeseen needs.] situations arising from any program or agency that are deemed an emergency."

(43) By adding a new section to read as follows:

"SECTION 83.1. Provided that of the funds expended for the salary of the governor's special assistant for housing, fifty percent of the total salary cost shall come from the legislative appropriation for office of the governor (GOV 100) and the remaining fifty percent of the total salary cost shall come from the special fund authorization for housing finance and development administration (BUF 229)."

(44) By adding a new section to read as follows:

"SECTION 83.2. Provided that of the general fund appropriation for office of the governor (GOV 100), the sum of \$120,000 for fiscal year 1996-1997 shall be used solely for services on a fee for the monitoring of federal legislation in Washington, D.C.; provided further that the funds shall not be transferred for any other purpose; provided further that any remaining funds shall lapse into the general fund; and provided further that the office of the governor shall submit a report of the activities and expenditures for the services no later than twenty days prior to the convening of the 1997 regular session."

(45) By amending section 86 to read as follows:

“SECTION 86. Provided that of the general fund appropriation for other policy development and coordination (GOV 102), the sum of \$843,760 for fiscal year 1995-1996 and the sum of [\$845,534] \$0 for fiscal year 1996-1997 shall be expended on the following:

	<u>FY 1995-1996</u>	<u>FY 1996-1997</u>
Low input sustainable yield	\$ 50,000	[\$ 50,000] \$0
Anthurium research	\$ 88,000	[\$ 88,000] \$0
Yellow sugarcane aphid research	\$ 66,000	[\$ 66,000] \$0
Pesticide education program	\$ 50,000	[\$ 50,000] \$0
Pesticide testing and registration	\$300,000	[\$300,000] \$0
Livestock waste management	\$100,000	[\$100,000] \$0
State farm fair	\$ 50,000	[\$ 50,000] \$0
Fruit fly post harvest treatment and research	\$139,760	[\$141,534] \$0

provided further that the governor’s agriculture coordinating committee shall be the expending agency; provided further that any expenditures shall be itemized in a report and submitted to the legislature; provided further that the governor’s agriculture coordinating committee shall submit a report which shall include, but not be limited to, the progress of research for each specific commodity that is funded and recommendations for funding in future years; and provided further that the aforementioned reports shall be submitted to the legislature no later than twenty days prior to the convening of the 1996 [and 1997 regular sessions.] session.”

(46) By amending section 87 to read as follows:

“SECTION 87. Provided that of the general fund appropriation for program planning, analysis and budgeting (BUF 101), the sum of [\$186,425,742] \$184,425,742 for fiscal year 1995-1996 and the sum of \$195,373,864 for fiscal year 1996-1997 shall be used for only the following purposes:

<u>Purpose</u>	<u>FY 1995-1996</u>	<u>FY 1996-1997</u>
Health fund premiums active and retirees	[\$180,831,125] <u>\$178,831,125</u>	\$189,779,247
Witness fees & related expenses	\$ 2,552,262	\$ 2,552,262
Court appointed counsel	\$ 3,042,355	\$ 3,042,355

provided further that the funds shall not be transferred for any other purpose; and provided further that the department shall submit to the legislature a detailed report of all expenditures no later than twenty days prior to the convening of the 1996 and 1997 regular sessions.”

(47) By amending section 91 to read as follows:

“SECTION 91. Provided that of the general fund appropriation for financial administration [program] division (BUF 115), the sum of [\$421,861,273] \$421,786,273 for fiscal year 1995-1996 and the sum of [\$429,400,049] \$427,256,444 for fiscal year 1996-1997 shall be used for [only] the following purposes:

<u>Purpose</u>	<u>FY 1995-1996</u>	<u>FY 1996-1997</u>
Interest and Principal on General Obligation Bonds	\$420,861,273	[\$426,990,049] <u>\$424,921,444</u>
Bond Underwriter's Fee	[\$ 1,000,000] <u>\$ 925,000</u>	[\$ 2,410,000] <u>\$ 2,335,000</u>

provided further that the funds shall not be transferred for any other purpose; and provided further that the department shall submit to the legislature a detailed report of all expenditures no later than twenty days prior to the convening of the 1996 and 1997 regular sessions.”

(48) By amending section 92 to read as follows:

“SECTION 92. Provided that of the general fund appropriation for financial administration division (BUF 115), the sum of [\$1,350,000] \$1,035,965 for fiscal year 1995-1996 and the sum of [\$1,350,000] \$1,035,965 for fiscal year 1996-1997 shall be used to meet the requirements of the uniform disposition of unclaimed property program pursuant to chapter 523A, Hawaii Revised Statutes; and provided further that the department of budget and finance shall submit an itemized expenditure report to the legislature no later than twenty days prior to the convening of the 1996 and 1997 regular sessions.”

(49) By adding a new section to read as follows:

“SECTION 92.1. Provided that for the collections unit in legal services (ATG 100), the department shall compile a detailed report on all collections due, collections received, and a status report on the unit after three years; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 1999 regular session.”

(50) By adding a new section to read as follows:

“SECTION 92.2. Provided that of the general fund appropriation for legal services (ATG 100), the sum of \$5,000 for fiscal year 1996-1997 shall be used for the operation of the Hawaii state clearinghouse on missing children.”

(51) By amending section 95 to read as follows:

“SECTION 95. Provided that of the general fund appropriation for retirement (BUF 141), the sum of \$267,823,914 for fiscal year 1995-1996 and the sum of [\$325,772,985] \$290,698,578 for fiscal year 1996-1997 shall be used for [only] the following purposes:



<u>Purpose</u>	<u>FY 1995-1996</u>	<u>FY 1996-1997</u>
Pension Accumulation	\$166,342,240	[\$223,029,280]
		<u>\$189,468,960</u>
Minimum Pension	\$ 20,365	\$ 19,555
Social Security and		
Medicare Contributions	\$101,461,309	[\$102,724,150]
		<u>\$101,210,063</u>

provided further that the funds shall not be transferred for any other purpose; and provided further that the department shall submit to the legislature a detailed report of all expenditures no later than twenty days prior to the convening of the 1996 and 1997 regular sessions.”

(52) By adding a new section to read as follows:

“SECTION 95.1. Provided that of the other fund appropriation for retirement (BUF 141), the sum of \$156,636 for fiscal year 1996-1997 shall be used solely to fund six temporary retirement program technician positions and related fringe benefits costs in order to accommodate the increased workload as a result of the early retirement incentive program (ERIP); and provided further that these funds shall not be transferred for any other purpose.”

(53) By amending section 98 to read as follows:

“SECTION 98. Provided that of the general fund appropriation to the county of Maui (SUB 401), the sum of [\$200,000] \$160,000 for fiscal year 1995-1996 shall be used to operate a Maui community culture and art center.”

SECTION 5. Part IV, Act 218, Session Laws of Hawaii 1995, is amended by amending Section 99 to read as follows:

“SECTION 99. CAPITAL IMPROVEMENTS PROGRAM PROJECTS AUTHORIZED. The sums of money appropriated or authorized in part II of this Act for the capital improvements program shall be expended for the projects listed below. Accounting of the appropriations by the department of accounting and general services shall be based on the projects listed in this section. Several related or similar projects may be combined into a single project, if such combination is advantageous or convenient for implementation; provided that the total cost of the projects thus combined shall not exceed the total of the sum specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this Part are in thousands of dollars.)

#### CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F

#### A. ECONOMIC DEVELOPMENT

#### BED113 - STATE TOURISM OFFICE

0A. P94001 CONVENTION CENTER FACILITY, OAHU

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE CONVENTION CENTER FACILITY. PROJECT TO INCLUDE ON AND OFF SITE INFRASTRUCTURE; GROUND IMPROVEMENTS; DRAINAGE; PARKING; UTILITIES; FURNISHINGS AND OTHER NECESSARY APPURTENANCES. FUNDS NOT NEEDED IN A COST ELEMENT MAY BE USED IN ANOTHER.							
		DESIGN					163
		CONSTRUCTION					752
		EQUIPMENT					8,545
		TOTAL FUNDING	BED		C		9,460C

AGR141 - AGRICULTURAL RESOURCE MANAGEMENT

1. HA0001 DRAINAGE IMPROVEMENTS, WAIMANALO IRRIGATION SYSTEM, OAHU

DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS TO CONTROL FLOODING WITHIN ABANDONED DITCH AND FLUME EASEMENTS OF THE IRRIGATION SYSTEM.

DESIGN		50	50
CONSTRUCTION		300	500
TOTAL FUNDING	AGR	350C	550C

2. W00003 MAUNAWILI DITCH IMPROVEMENTS, WAIMANALO IRRIGATION SYSTEM, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO REHABILITATE DITCH INTAKES, REPLACE WITH PIPES AND SIPHONS CROSSING FORMER DITCH ALIGNMENTS TOGETHER WITH APPURTENANT FACILITIES.

PLANS		10	15
DESIGN		50	75
CONSTRUCTION		600	600
TOTAL FUNDING	AGR	660C	690C

3. 920008 KUALAPUU RESERVOIR SECURITY FENCING, MOLOKAI IRRIGATION SYSTEM, MOLOKAI

DESIGN AND CONSTRUCTION FOR SECURITY FENCING TOGETHER WITH APPURTENANT WORKS FOR THE RESERVOIR PERIMETER INCLUDING REMOVAL AND DISPOSAL OF EXISTING FENCING.

DESIGN		50	
CONSTRUCTION		250	
TOTAL FUNDING	AGR	300C	C

4. 950001 KUALAPUU RESERVOIR IMPROVEMENTS, MOLOKAI IRRIGATION SYSTEM, MOLOKAI

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A RESERVOIR OUTLET TO REPLACE AN EXISTING OUTLET AND STRAINER STATION TOGETHER WITH OTHER NECESSARY IMPROVEMENTS. PROJECT TO INCLUDE APPURTENANT WORKS WHICH MAY BECOME APPARENT UPON LOWERING THE WATER LEVEL AND INSPECTING EXISTING OUTLET. PHASE II FILTRATION AND CHLORINATION STATION ADDED TO OUTLET END OF RESERVOIR.							
		PLANS			10		
		DESIGN			25		
		CONSTRUCTION			205		150
		EQUIPMENT			15		10
		TOTAL FUNDING	AGR		255C		160C

## AGR192 - GENERAL ADMINISTRATION FOR AGR

## 5. KAMUELA COOLING PLANT, HAWAII

PLANS, DESIGN, CONSTRUCTION, AND  
EQUIPMENT FOR IMPROVEMENTS AT THE  
KAMUELA COOLING PLANT.

PLANS			1	
DESIGN			1	
CONSTRUCTION			47	
EQUIPMENT			1	
TOTAL FUNDING	AGS		50C	C

## BED120 - ENERGY DEVELOPMENT AND MANAGEMENT

## 6. NELH12 HGP-A GEOTHERMAL WELL PLUG AND ABANDONMENT, HAWAII

PLANS, DESIGN, AND CONSTRUCTION FOR  
PLUGGING AND ABANDONMENT OF THE HGP-A  
WELL AT THE PUNA RESEARCH FACILITY TO  
ISOLATE THE GEOTHERMAL RESERVOIR AND  
ELIMINATE POTENTIAL RISKS OF HYDROGEN  
SULPHIDE OR SILICA CONTAMINANTS  
COMMUNICATING WITH THE SURROUNDING  
COMMUNITY OF PUNA.

PLANS			10	
DESIGN			10	
CONSTRUCTION			270	
TOTAL FUNDING	BED		290C	C

## LNR141 - WATER AND LAND DEVELOPMENT

7. G10 HANAPEPE WELL DEVELOPMENT, TRANSMISSION AND  
APPURTENANCES, KAUAI

PLANS, LAND ACQUISITION, DESIGN, AND  
CONSTRUCTION FOR THE DEVELOPMENT OF  
THE HANAPEPE WELL. PROJECT TO INCLUDE  
PUMP, CONTROLS, CONNECTING PIPELINE, AND  
OTHER INCIDENTAL AND RELATED WORK.

PLANS			48	
LAND			1	
DESIGN			145	
CONSTRUCTION				1,447

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		TOTAL FUNDING	LNR		194C		1,447C
8.	G75	HUALALAI WELL DEVELOPMENT AND SUPPORT FACILITIES, HAWAII					
		LAND ACQUISITION AND CONSTRUCTION FOR PUMP, CONTROLS, CONNECTING PIPELINE AND OTHER INCIDENTAL AND RELATED WORK.					
		LAND			1		
		CONSTRUCTION			4,420		
		TOTAL FUNDING	LNR		4,421C		C
9.	G76	HONOKAA EXPLORATORY WELL IMPROVEMENTS, HAWAII					
		CONSTRUCTION FOR AN EXPLORATORY WELL, INCLUDING CASING INSTALLATION, PUMP TESTING, AND OTHER RELATED AND INCIDENTAL WORK, TO REPLACE THE FAILED EXPLORATORY WELL.					
		CONSTRUCTION			200		
		TOTAL FUNDING	LNR		200C		C
10.	J23	KAPAKAHI WELL DEVELOPMENT AND APPURTENANCES, OAHU					
		CONSTRUCTION FOR PUMPS, CONTROLS, CONNECTING PIPELINE, AND OTHER INCIDENTAL AND RELATED WORK.					
		CONSTRUCTION			758		
		TOTAL FUNDING	LNR		758C		C
11.	J36	LEEWARD POTABLE WATER WELL, OAHU					
		PLANS, LAND ACQUISITION, AND DESIGN FOR A POTABLE WATER WELL AND ITS DEVELOPMENT, TO INCLUDE CASING INSTALLATION, PUMP TESTING, PUMP CONTROLS, AND OTHER INCIDENTAL AND RELATED WORK.					
		PLANS			195		
		LAND			97		
		DESIGN			292		
		TOTAL FUNDING	LNR		584C		C
12.	J39	NORTH KONA WELL SITES PLANNING AND LAND ACQUISITION, HAWAII					
		PLANS AND LAND ACQUISITION FOR WATER WELLS IN NORTH KONA.					
		PLANS			195		
		LAND			1,000		
		TOTAL FUNDING	LNR		598C		C
			LNR		597W		W
14.	G21C	PALANI ROAD WATER TRANSMISSION LINE, PHASE I, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR A WATER TRANSMISSION LINE, PHASE I, IN NORTH KONA. PROJECT TO BE CONSTRUCTED IN THE VICINITY OF PALANI ROAD TO INCLUDE TRANSMISSION PIPELINE AND OTHER INCIDENTAL AND RELATED WORK.					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		PLANS			38		
		DESIGN			76		
		CONSTRUCTION					954
		TOTAL FUNDING	LNR		114W		954W
16.	G25C	WAIMEA EXPLORATORY WELL, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR AN EXPLORATORY WELL, INCLUDING CASING INSTALLATION, PUMP TESTING, AND OTHER RELATED AND INCIDENTAL WORK.					
		PLANS			68		
		DESIGN			130		
		CONSTRUCTION					1,303
		TOTAL FUNDING	LNR		198C		1,303C
17.	G43B	PEARL HARBOR WELLS, PHASE I, EXPLORATORY WELL AND SITE ACQUISITION, OAHU					
		PLANS, LAND ACQUISITION, AND DESIGN FOR AN EXPLORATORY WELL, INCLUDING CASING INSTALLATION, PUMP TESTING, AND OTHER RELATED AND INCIDENTAL WORK.					
		PLANS			195		
		LAND			390		
		DESIGN			293		
		TOTAL FUNDING	LNR		878C		C
18.	G43C	KAHUKU EXPLORATORY WELL, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR AN EXPLORATORY WELL, INCLUDING CASING INSTALLATION, PUMP TESTING, AND OTHER RELATED AND INCIDENTAL WORK.					
		PLANS			48		
		DESIGN			95		
		CONSTRUCTION					955
		TOTAL FUNDING	LNR		143C		955C
19.	G43D	WINDWARD EXPLORATORY WELL, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR AN EXPLORATORY WELL, INCLUDING CASING INSTALLATION, PUMP TESTING, AND OTHER RELATED AND INCIDENTAL WORK.					
		PLANS			48		
		DESIGN			95		
		CONSTRUCTION					955
		TOTAL FUNDING	LNR		143C		955C
20.	G43E	WAIAWA EXPLORATORY WELL, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR AN EXPLORATORY WELL, INCLUDING CASING INSTALLATION, PUMP TESTING, AND OTHER RELATED AND INCIDENTAL WORK.					
		PLANS			48		
		DESIGN			95		
		CONSTRUCTION					955

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		TOTAL FUNDING	LNR	143C		955C	
23.	J32	WAIMANALO WASTEWATER TREATMENT PLANT IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR A BACKWASH FILTER STRUCTURE AND FILTER CELLS, CHLORINE MIXING AND CONTACT CHAMBER, AND DISSOLVED AIR FLOTATION THICKENER, INCLUDING ALL STRUCTURAL AND MECHANICAL WORK.					
		PLANS			1		
		DESIGN			184		
		CONSTRUCTION			1,850		
		TOTAL FUNDING	LNR	2,035C			C
24.	G44B	LIHUE/HANAMAULU WELL #2, KAUAI					
		PLANS, DESIGN, AND CONSTRUCTION FOR PUMP, CONTROLS, CONNECTING PIPELINE, AND OTHER INCIDENTAL AND RELATED WORK.					
		PLANS			38		
		DESIGN			75		
		CONSTRUCTION					760
		TOTAL FUNDING	LNR	113C			760C
25.		UPPER PALOLO VALLEY WATER SYSTEM IMPROVEMENTS, OAHU					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR INFRASTRUCTURE IMPROVEMENTS FOR THE UPPER PALOLO VALLEY WATER SYSTEM. PROJECT TO INCLUDE ACQUISITION OF LAND FOR ACCESS AND UTILITY EASEMENTS, PIPING, TANK AND CONTROLS, PUMPS, AND OTHER RELATED IMPROVEMENTS.					
		LAND			50		
		DESIGN			10		10
		CONSTRUCTION			60		40
		TOTAL FUNDING	LNR	120C			50C
25A.	G09	KAPAA HOMESTEADS WELL NO. 3, KAUAI					
		PLANS, LAND ACQUISITION, AND DESIGN FOR AN EXPLORATORY WELL. PROJECT TO INCLUDE DRILLING, CASING INSTALLATION, PUMP TESTING, AND OTHER INCIDENTAL AND RELATED WORK.					
		PLANS					24
		LAND					1
		DESIGN					50
		TOTAL FUNDING	LNR		C		75C
25B.		WATER SOURCES FOR STATE PROJECTS, OAHU					
		CONSTRUCTION FOR THE PURCHASE OF WATER SOURCE SUPPLY FROM THE CITY AND COUNTY OF HONOLULU BOARD OF WATER SUPPLY.					
		CONSTRUCTION					25

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		TOTAL FUNDING	LNR		C		25C
<b>BED142 - GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT</b>							
25C.		SAND ISLAND METC AND WATERFRONT IMPROVEMENT PROJECT, OAHU					
		DESIGN FOR A MARINE PROPULSION FACILITY AT THE MARINE EDUCATION AND TRAINING CENTER FOR HONOLULU COMMUNITY COLLEGE.					
		DESIGN					415
		TOTAL FUNDING	BED		C		415C

**B. EMPLOYMENT****HMS802 - VOCATIONAL REHABILITATION**

## 1. 802-3 HOOPONO AUDITORIUM, AIR CONDITIONING, OAHU

DESIGN AND CONSTRUCTION FOR AIR CONDITIONING IMPROVEMENTS TO THE HOOPONO AUDITORIUM AND OTHER RELATED WORK.

DESIGN				20
CONSTRUCTION				40
TOTAL FUNDING	AGS		N	60N

## 2. 802-4 HOOPONO BUILDING RENOVATIONS, OAHU

DESIGN AND CONSTRUCTION FOR THE HOOPONO BUILDING. PROJECT SHALL INCLUDE THE REMOVAL OF ARCHITECTURAL BARRIERS AND OTHER RELATED IMPROVEMENTS.

DESIGN				12
CONSTRUCTION				75
TOTAL FUNDING	HMS		87N	N

**LBR903 - OFFICE OF COMMUNITY SERVICES**

## 3. OPPORTUNITIES FOR THE RETARDED TRAINING FACILITIES, OAHU

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION, IMPROVEMENT, AND/OR EXPANSION TO THE OPPORTUNITIES FOR THE RETARDED TRAINING FACILITY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42D, HRS.

PLANS				1
LAND				1
DESIGN				1
CONSTRUCTION				1,498
EQUIPMENT				1
TOTAL FUNDING	LBR		5,000C	1,500C

**C. TRANSPORTATION FACILITIES****TRN102 - HONOLULU INTERNATIONAL AIRPORT**

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
1.	A16	HIA INTERNATIONAL TERMINAL COMPLEX, OAHU					
		DESIGN AND CONSTRUCTION FOR THE CORRECTION OF FUNCTIONAL AND SPACE DEFICIENCIES; ENLARGE BAGGAGE CLAIM AREA; REPLACE BAGGAGE CAROUSELS; IMPROVE AND ENLARGE TOUR GROUP ASSEMBLY AREA; IMPROVE AIR CONDITIONING AND LIGHTING; ADD ROOF COVERING OVER MAUKA MALL AREA; RELOCATE U.S. CUSTOMS; AND OTHER RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		490			
		CONSTRUCTION		5,873			
		TOTAL FUNDING	TRN	3,395B			B
			TRN	968E			E
			TRN	2,000N			N
2.	A23	HIA AIRFIELD IMPROVEMENTS, RUNWAY 8L RECONSTRUCTION, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS FOR THE RECONSTRUCTION OF THE WESTERN 5,000 FEET OF RUNWAY 8L. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS AND OTHER RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		978			
		CONSTRUCTION		16,537			
		TOTAL FUNDING	TRN	8,905B			B
			TRN	2,610E			E
			TRN	6,000N			N
3.	A30	HIA ELECTRICAL IMPROVEMENTS, EMERGENCY GENERATORS, OAHU					
		DESIGN AND CONSTRUCTION FOR THE MODIFICATION OF ELECTRICAL SYSTEMS AT HONOLULU INTERNATIONAL AIRPORT. PROJECT TO INCLUDE EMERGENCY GENERATORS FOR THE AIRPORT AND OTHER RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		596			
		CONSTRUCTION				11,740	
		TOTAL FUNDING	TRN	596B		2,395B	
			TRN	E		1,695E	
			TRN	N		7,650N	
4.		HIA, SERVICE SUPPORT FACILITIES, RECONSTRUCTION OF SEWER LINE, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RECONSTRUCTION OF THE MAIN SEWER LINE FRONTING THE OVERSEAS TERMINAL BUILDING AND OTHER RELATED IMPROVEMENTS.					



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN			72		
		CONSTRUCTION			1,155		
		TOTAL FUNDING	TRN		1,035B		B
			TRN		192E		E
4A.		HIA, INTERISLAND INTERIM TAXIWAY REALIGNMENT, OAHU					
		DESIGN FOR THE INTERIM REALIGNMENT OF EITHER TAXIWAY G OR L INCLUDING APRONS AND TAXIWAYS, ROADWAYS, PARKING, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					300
		TOTAL FUNDING	TRN		B		300B
4B.		HIA, INTERISLAND HARDSTANDS, OAHU					
		DESIGN AND CONSTRUCTION FOR CONCRETE PARKING POSITIONS FOR INTERISLAND AIRCRAFT AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					55
		CONSTRUCTION					645
		TOTAL FUNDING	TRN		B		700B
4C.		HIA AIRFIELD IMPROVEMENTS, PERIMETER ROADWAYS, OAHU					
		DESIGN FOR HONOLULU INTERNATIONAL AIRPORT PERIMETER ROAD BETWEEN THE NORTHERN AND SOUTHERN PORTION OF THE AIRPORT. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS AND OTHER RELATED WORK.					
		DESIGN					700
		TOTAL FUNDING	TRN		B		700B
TRN114 - KE-AHOLE AIRPORT							
4D.		KEAHOLE AIRPORT IMPROVEMENTS, HAWAII					
		CONSTRUCTION FOR IMPROVEMENTS FOR TICKET COUNTERS AND BAGGAGE AREAS AND OTHER RELATED IMPROVEMENTS AT KEAHOLE AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					7,700
		TOTAL FUNDING	TRN		B		5,900B
			TRN		N		1,800N
4E. G21B		HINA LANI DRIVE WATER TRANSMISSION LINE AND RESERVOIR, HAWAII					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A WATER TRANSMISSION PIPELINE, RESERVOIR, AND OTHER INCIDENTAL AND RELATED WORK IN NORTH KONA, IN THE VICINITY OF HINA LANI DRIVE.					
		PLANS			48		
		LAND			1		
		DESIGN			95		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		CONSTRUCTION					955
		TOTAL FUNDING	TRN	144B			955B
4F.	77808	KEAHOLE RESERVOIR, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR A WATER RESERVOIR, PIPELINE, AND OTHER INCIDENTAL AND RELATED WORK TO IMPROVE THE NORTH KONA WATER SYSTEM NEAR KEAHOLE AIRPORT.					
		PLANS			63		
		DESIGN			125		
		CONSTRUCTION					1,351
		TOTAL FUNDING	TRN	188B			1,351B
TRN131 - KAHULUI AIRPORT							
5.		KAHULUI AIRPORT, MECHANIC SHOP, MAUI					
		DESIGN AND CONSTRUCTION FOR THE EXPANSION OF THE EXISTING MECHANIC SHOP AT THE KAHULUI AIRPORT AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					9
		CONSTRUCTION					51
		TOTAL FUNDING	TRN		B		60B
6.		KAHULUI AIRPORT, EXTENSION OF RUNWAY 2-20 AND TAXIWAY IMPROVEMENTS, MAUI					
		DESIGN AND CONSTRUCTION FOR RUNWAY STRENGTHENING AND EXTENSION, RAMP APRON, TAXIWAY, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			884		100
		CONSTRUCTION			20,405		20,545
		TOTAL FUNDING	TRN		11,404B		2,557B
			TRN		2,885E		E
			TRN		7,000N		18,088N
6A.		KAHULUI AIRPORT, ARFF TRAINING FACILITY, MAUI					
		CONSTRUCTION FOR THE AIRCRAFT RESCUE AND FIRE FIGHTING FACILITY AT KAHULUI AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					1,441
		TOTAL FUNDING	TRN		N		1,441N
6B.		KAHULUI AIRPORT, RELOCATE HOLD CARGO BUILDING, MAUI					
		DESIGN AND CONSTRUCTION FOR THE RELOCATION OF THE EXISTING HOLD CARGO BUILDING AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN					200
		CONSTRUCTION					4,000
		TOTAL FUNDING	TRN		B		3,200B
			TRN		N		1,000N
6C.		KAHULUI AIRPORT, EAST RAMP SEWER SYSTEM, MAUI					
		CONSTRUCTION FOR THE UPGRADE OF THE SEWER SYSTEM LOCATED AT THE EAST RAMP OF KAHULUI AIRPORT. PROJECT TO INCLUDE CONNECTION TO THE COUNTY SEWAGE SYSTEM AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION					2,500
		TOTAL FUNDING	TRN		B		2,500B
6D.		KAHULUI AIRPORT, FUEL STORAGE SITE DEVELOPMENT, MAUI					
		CONSTRUCTION FOR THE DEVELOPMENT OF AN AREA TO ACCOMMODATE A FUEL STORAGE TANK FARM. SITE WORK TO INCLUDE EXCAVATION, CLEARING AND GRUBBING, ACCESS ROAD AND UTILITIES, AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION					510
		TOTAL FUNDING	TRN		B		510B
6E.		KAHULUI AIRPORT, AIRPORT ACCESS ROAD, MAUI					
		DESIGN FOR THE KAHULUI AIRPORT ACCESS ROAD AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					800
		TOTAL FUNDING	TRN		B		800B
TRN151 - LANAI AIRPORT							
6F.		LANAI AIRPORT IMPROVEMENTS, LANAI					
		DESIGN FOR AN INSTRUMENT LANDING SYSTEM AT LANAI AIRPORT AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					200
		TOTAL FUNDING	TRN		B		200B
TRN161 - LIHUE AIRPORT							
7.		LIHUE AIRPORT, SERVICE AREA EXTENSION AND MAINTENANCE BUILDING, KAUAI					
		DESIGN AND CONSTRUCTION FOR SERVICE AREA IMPROVEMENTS TO INCLUDE THE EXTENSION OF THE MAINTENANCE BUILDING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS AND OTHER RELATED WORK.					
		DESIGN			42		
		CONSTRUCTION			437		
		TOTAL FUNDING	TRN		479B		B
7A.		LIHUE AIRPORT, INTERIM HELIPORT IMPROVEMENTS, KAUAI					

## CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000's)				
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		CONSTRUCTION FOR THE INTERIM HELIPORT, INCLUDING RELOCATION OF TENANTS, MODIFICATIONS TO EXISTING FACILITIES, AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION				3,000	
		TOTAL FUNDING	TRN		B	3,000B	
7B.		LIHUE AIRPORT, GENERAL AVIATION SUBDIVISION, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE GENERAL AVIATION SUBDIVISION, INCLUDING BUILDINGS, ROADS, PARKING, UTILITIES, MODIFICATIONS TO EXISTING FACILITIES, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				100	
		CONSTRUCTION				7,200	
		TOTAL FUNDING	TRN		B	100B	
			TRN		N	7,200N	
7C. F04		LIHUE AIRPORT ENVIRONMENTAL IMPACT STATEMENT, KAUAI					
		PLANS FOR AN ENVIRONMENTAL IMPACT STATEMENT AT LIHUE AIRPORT.					
		PLANS				800	
		TOTAL FUNDING	TRN		B	800B	
TRN195 - AIRPORTS ADMINISTRATION							
8. F04		AIRPORT PLANNING, STATEWIDE					
		PLANS FOR PROVIDING BASIC DATA AND INFORMATION FOR PROPER PLANNING, PRELIMINARY DESIGNS, SPECIAL ENGINEERING, ARCHITECTURAL, ENVIRONMENTAL, NOISE COMPATIBILITY, SPECIAL STUDIES FOR STATEWIDE SYSTEM OF AIRPORTS, AND CONTINUE REVIEW AND UPDATING MASTER PLANS AND NOISE COMPATIBILITY PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		1,582		1,967	
		TOTAL FUNDING	TRN	1,102B		1,767B	
			TRN	480N		200N	
9. F06		LAND ACQUISITION, STATEWIDE					
		LAND ACQUISITION FOR AIRPORT FACILITIES AND LEASE RIGHTS FOR STATEWIDE AIRPORTS.					
		LAND			90		
		TOTAL FUNDING	TRN		90B		B
10. F08		AIRPORT IMPROVEMENTS, STATEWIDE					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS AT VARIOUS AIRPORTS. IMPROVEMENTS FOR SAFETY, CERTIFICATION REQUIREMENTS AND OPERATIONAL EFFICIENCY, INCLUDING FIRE ALARM, FLIGHT INFORMATION, SECURITY, COMMUNICATIONS, ENERGY MONITORING, WEATHER OBSERVING, AND AIRPORT OPERATIONS SYSTEMS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		193		290	
		CONSTRUCTION		1,063		1,354	
		TOTAL FUNDING	TRN	1,063B		1,354B	
			TRN	193E		290E	
11.		AIRPORTS DIVISION CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S AIRPORTS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM RELATED POSITIONS.					
		PLANS		1,198		1,198	
		DESIGN		1		1	
		CONSTRUCTION		1		1	
		TOTAL FUNDING	TRN	900B		900B	
			TRN	300E		300E	
11A.	F11	MULTI-CULTURAL ENHANCEMENTS TO AIRPORT TERMINALS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FACILITIES TO REFLECT HAWAII'S MULTI-CULTURAL ENVIRONMENT INCLUDING IMPLEMENTATION OF PROJECTS IDENTIFIED BY THE HAWAII AIRPORTS CULTURAL DEVELOPMENT COMMITTEE AND OTHER RELATED IMPROVEMENTS TO VARIOUS AIRPORT TERMINALS, STATEWIDE.					
		DESIGN				1,500	
		CONSTRUCTION				3,400	
		EQUIPMENT				100	
		TOTAL FUNDING	TRN		B	5,000B	
11B.		PRINCEVILLE AIRPORT, IMPROVEMENTS TO RUNWAY 5-23, KAUAI					
		DESIGN FOR THE WIDENING OF RUNWAY 5-23 AT PRINCEVILLE AIRPORT AND OTHER RELATED IMPROVEMENTS.					
		DESIGN				100	
		TOTAL FUNDING	TRN		B	100B	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
11C.		AIRPORT AUTOMATED WEATHER OBSERVING SYSTEMS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF AUTOMATED WEATHER OBSERVING STATIONS AT HANA, KAPALUA, LANAI, MOLOKAI, WAIMEA-KOHALA, AND PRINCEVILLE AIRPORTS.					
		DESIGN					60
		CONSTRUCTION					540
		TOTAL FUNDING	TRN		B		600B
11D.		WATER SOURCES FOR DEPARTMENT OF TRANSPORTATION AIRPORTS DIVISION, OAHU					
		CONSTRUCTION FOR THE PURCHASE OF WATER SOURCE SUPPLY FROM THE CITY AND COUNTY OF HONOLULU BOARD OF WATER SUPPLY.					
		CONSTRUCTION					497
		TOTAL FUNDING	TRN		B		497B
11E.		AGRICULTURAL CARGO MARSHALLING FACILITIES, STATEWIDE					
		PLANS FOR AGRICULTURAL CARGO MARSHALLING FACILITIES AT HONOLULU INTERNATIONAL AIRPORT, HILO INTERNATIONAL AIRPORT, AND KAHULUI AIRPORT.					
		PLANS					700
		TOTAL FUNDING	TRN		B		700B
TRN301 - HONOLULU HARBOR							
12. J02		IMPROVEMENTS TO FACILITIES AT PIERS 19 TO 34, HONOLULU HARBOR, OAHU					
		CONSTRUCTION FOR IMPROVEMENTS TO PIERS, SHEDS, YARDS, AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION					1,928
		TOTAL FUNDING	TRN		E		1,928E
12A. J08		PIER 15 RECONSTRUCTION, HONOLULU HARBOR, OAHU					
		CONSTRUCTION FOR THE DEMOLITION AND RECONSTRUCTION OF PIER 15 INCLUDING UTILITIES AND OTHER IMPROVEMENTS.					
		CONSTRUCTION					1,500
		TOTAL FUNDING	TRN		B		1,500B
12B. J20		PIER 40 LAND ACQUISITION, HONOLULU HARBOR, OAHU					
		LAND ACQUISITION FOR PIER 40 TO ACCOMMODATE INTER-ISLAND BARGE OPERATIONS.					
		LAND					4,500
		TOTAL FUNDING	TRN		E		4,500E
TRN303 - BARBERS POINT HARBOR							

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
13.	J10	BARBERS POINT HARBOR DEEPENING, OAHU					
		PLANS FOR MODIFICATIONS AND DEEPENING OF HARBOR ENTRANCE CHANNEL, TURNING BASIN AND BERTHING AREAS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		470		470	
		TOTAL FUNDING	TRN	220B		220B	
			TRN	250N		250N	
TRN305 - KEWALO BASIN							
13A.	L10	KEWALO BASIN IMPROVEMENTS, OAHU					
		DESIGN FOR THE REPLACEMENT OF CATWALKS, UTILITIES, AND OTHER IMPROVEMENTS.					
		DESIGN				150	
		TOTAL FUNDING	TRN		B	150B	
TRN311 - HILO HARBOR							
14.	L10	HILO HARBOR IMPROVEMENTS, HAWAII					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS AT HILO HARBOR INCLUDING PIERS, YARDS, SHEDS, UTILITIES, ROADWAYS, AND OTHER RELATED IMPROVEMENTS.					
		LAND		48			
		DESIGN		96			
		CONSTRUCTION		478		711	
		TOTAL FUNDING	TRN	622B		711B	
TRN313 - KAWAIHAE HARBOR							
15.	L05	BARGE TERMINAL IMPROVEMENTS AT KAWAIHAE HARBOR, HAWAII					
		DESIGN FOR IMPROVEMENTS TO BARGE TERMINAL PIER, SHED, YARD, UTILITIES, ROADWAYS AND OTHER RELATED IMPROVEMENTS.					
		DESIGN				976	
		TOTAL FUNDING	TRN		B	976B	
TRN331 - KAHULUI HARBOR							
16.	M01	KAHULUI HARBOR IMPROVEMENTS, MAUI					
		DESIGN AND CONSTRUCTION FOR CARGO YARD DRAINAGE, LIGHTING, PAVING, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN		193			
		CONSTRUCTION				1,447	
		TOTAL FUNDING	TRN	193B			B
			TRN		E	1,447E	
17.	M02	KAHULUI HARBOR DEEPENING, MAUI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		PLANS FOR THE DEEPENING OF TURNING BASIN AND BERTHING AREA AT KAHULUI HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			195		195
		TOTAL FUNDING	TRN		95B		95B
			TRN		100N		100N
18.	M09	BARGE TERMINAL IMPROVEMENTS AT KAHULUI HARBOR, MAUI					
		DESIGN AND CONSTRUCTION FOR PIER, YARD, SHED, AND OTHER IMPROVEMENTS TO BARGE TERMINAL FACILITIES.					
		DESIGN			195		
		CONSTRUCTION			3,891		
		TOTAL FUNDING	TRN		195B		B
			TRN		3,891E		E
TRN361 - NAWILIWILI HARBOR							
19.	K06	NAWILIWILI HARBOR IMPROVEMENTS, KAUAI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO CARGO HANDLING AREAS INCLUDING ROADWAY REALIGNMENT, WATER SYSTEM UPGRADE, AND OTHER RELATED IMPROVEMENTS.					
		LAND			492		
		DESIGN			492		
		CONSTRUCTION			984		1,935
		TOTAL FUNDING	TRN		1,968B		B
			TRN		E		1,935E
TRN351 - KAUMALAPAU HARBOR							
19A.		KAUMALAPAU HARBOR, LANAI					
		LAND ACQUISITION AND DESIGN FOR KAMALAPAU HARBOR. IMPROVEMENTS TO INCLUDE SHED, YARD, PIER, AND OTHER RELATED IMPROVEMENTS.					
		LAND					1
		DESIGN					200
		TOTAL FUNDING	TRN		E		201E
TRN395 - HARBORS ADMINISTRATION							
20.	I01	STATEWIDE HARBOR PLANNING, STATEWIDE					
		PLANS FOR CONTINUING HARBOR STUDIES, RESEARCH AND ADVANCE PLANNING OF HARBOR AND TERMINAL FACILITIES ON ALL ISLANDS.					
		PLANS			243		243
		TOTAL FUNDING	TRN		243B		243B
21.	I02	STATEWIDE WAVE AND CURRENT MONITORING, STATEWIDE					



## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		PLANS FOR MONITORING OF WATER AND CURRENTS AT VARIOUS STATE COMMERCIAL HARBORS.					
		PLANS			376		
		TOTAL FUNDING	TRN		376B		B
22.	I03	MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT NEIGHBOR ISLAND PORTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, AND OTHER RELATED FACILITIES.					
		DESIGN			71		71
		CONSTRUCTION			190		190
		TOTAL FUNDING	TRN		261B		261B
23.	I05	MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT OAHU PORTS, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, AND OTHER RELATED FACILITIES.					
		DESIGN			47		47
		CONSTRUCTION			142		142
		TOTAL FUNDING	TRN		189B		189B
24.		HARBORS DIVISION CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HARBORS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM RELATED POSITIONS.					
		PLANS			998		998
		DESIGN			1		1
		CONSTRUCTION			1		1
		TOTAL FUNDING	TRN		1,000E		1,000E

## TRN501 - OAHU HIGHWAYS

25. R52 CASTLE JUNCTION INTERCHANGE, KOOLAUPOKO, OAHU

LAND ACQUISITION FOR A HIGHWAY INTERCHANGE TO REPLACE THE EXISTING AT-GRADE INTERSECTION AT THE JUNCTION OF KALANIANA'OLE, PALI, AND KAMEHAMEHA HIGHWAYS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

LAND		2,500	
TOTAL FUNDING	TRN	500E	E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
			TRN	2,000N			N
26.	R71	LIKELIKE HWY-KAHEKILI HWY INTERCHANGE, AND KAHEKILI HWY IMPROVEMENTS, OAHU					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR LIKELIKE HIGHWAY-KAHEKILI HIGHWAY INTERCHANGE AND KAHEKILI HIGHWAY IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND		800			
		DESIGN		3,700			
		CONSTRUCTION					6,014
		TOTAL FUNDING	TRN		B		1,771B
			TRN	3,860E			E
			TRN	640N			4,243N
27.	S11	HAUULA BASEYARD IMPROVEMENTS, OAHU					
		LAND ACQUISITION AND DESIGN FOR THE DEMOLITION OF EXISTING METAL FRAME VEHICLE/STORAGE SHED AND CONSTRUCT A NEW HOLLOW TILE VEHICLE/STORAGE SHED.					
		LAND		1			
		DESIGN		25			
		TOTAL FUNDING	TRN	26E			E
28.	S14	INSTALLATION OF CHAIN LINK FENCE AT VARIOUS LOCATIONS, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A 6-FOOT HIGH CHAIN LINK FENCE WITH CONCRETE FOOTINGS TO PREVENT PEDESTRIANS FROM CROSSING THE HIGHWAY AT MIDBLOCK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		50			
		CONSTRUCTION					400
		TOTAL FUNDING	TRN	50E			80E
			TRN	N			320N
29.	S74	OAHU BIKEWAYS, OAHU					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A BIKEWAY ON OAHU FROM THE VICINITY OF ALA MOANA PARK TO MOKULEIA BY WAY OF PEARL HARBOR, WAIPAHU, WAIANAE, AND KAENA POINT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND		5			
		DESIGN		220			
		CONSTRUCTION					4,170
		TOTAL FUNDING	TRN	100E			850E

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
			TRN		125N		3,320N
30.	S82	NIMITZ HIGHWAY - MAKAI BOULEVARD IMPROVEMENTS, OAHU					
		LAND ACQUISITION AND DESIGN FOR IMPROVEMENTS TO NIMITZ HIGHWAY FROM THE KEEHI INTERCHANGE AT INTERSTATE H-1 ALONG THE MAKAI BOULEVARD NETWORK TO KAPIOLANI INTERCHANGE ON INTERSTATE H-1. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND					7,000
		DESIGN		10,000			
		TOTAL FUNDING	TRN	1,200B			B
			TRN	800E			1,500E
			TRN	8,000N			5,500N
31.	S221	INOAOLE STREAM BRIDGE, KALANIANAOLE HIGHWAY, WAIMANALO, OAHU					
		LAND ACQUISITION FOR THE REPLACEMENT OF THE INOAOLE STREAM BRIDGE ON THE KALANIANAOLE HIGHWAY IN WAIMANALO. DESIGN SHOULD ALLOW FOR FREE SPAN CONSTRUCTION OF THE APERTURE UNDER THE BRIDGE.					
		LAND		250			
		TOTAL FUNDING	TRN	250E			E
32.	S230	WAIHAOLE BRIDGE REPLACEMENT, KAMEHAMEHA HIGHWAY, OAHU					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF THE EXISTING CONCRETE STRUCTURE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		120			
		CONSTRUCTION		1,080			
		TOTAL FUNDING	TRN	270E			E
			TRN	930N			N
33.	S231	KALANIANAOLE HIGHWAY WIDENING AND/OR REALIGNMENT, WAIMANALO TOWN, OAHU					
		PLANS FOR WIDENING AND/OR REALIGNMENT OF KALANIANAOLE HIGHWAY EXTENDING FROM THE OLOMANA GOLF COURSE TO THE WAIMANALO BEACH PARK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		800			
		TOTAL FUNDING	TRN	160E			E
			TRN	640N			N
34.	S232	HIGHWAY LIGHTS ON INTERSTATE H-2, WAIAWA TO LEILEHUA INTERCHANGES, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF HIGHWAY LIGHTS ALONG INTERSTATE H-2 FROM WAIAWA INTERCHANGE TO LEILEHUA INTERCHANGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			800		
		CONSTRUCTION					8,000
		TOTAL FUNDING	TRN		200E		1,600E
			TRN		600N		6,400N
35.	S236	KAMEHAMEHA HIGHWAY LIGHTS, KIPAPA STREET TO WAIKALANI DRIVE, OAHU					
		CONSTRUCTION FOR THE INSTALLATION OF NEW HIGHWAY LIGHTS ALONG KAMEHAMEHA HIGHWAY FROM KIPAPA STREET TO WAIKALANI DRIVE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			800		
		TOTAL FUNDING	TRN		160E		E
			TRN		640N		N
36.	S237	KAILUA ROAD-KALANIANA'OLE HIGHWAY TO KAWAINUI BRIDGE, HIGHWAY LIGHTS, OAHU					
		CONSTRUCTION FOR THE REPLACEMENT OF EXISTING HIGHWAY LIGHTS WITH ENERGY EFFICIENT HIGH PRESSURE SODIUM LUMINARIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			120		
		TOTAL FUNDING	TRN		30E		E
			TRN		90N		N
37.	S239	TRAFFIC MANAGEMENT SYSTEM, INTERSTATE H-1, H-2, AND KALANIANA'OLE HWY, OAHU					
		DESIGN FOR A TRAFFIC MANAGEMENT SYSTEM WHICH INCLUDES THE INSTALLATION OF VARIABLE AND CHANGEABLE MESSAGE SIGNS, LOOP DETECTORS, EMERGENCY TELEPHONES, TRAFFIC SIGNAL SYSTEMS, AND FIBER-OPTIC CABLES AND CAMERAS (CCTV). PROJECT TO INCLUDE THE PROCUREMENT OF COMPUTER HARDWARE AND SOFTWARE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			5,000		
		TOTAL FUNDING	TRN		580E		E
			TRN		4,420N		N
38.	S240	KEAAHALA ROAD WIDENING, OAHU					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		LAND ACQUISITION AND DESIGN FOR WIDENING KEAAHALA ROAD FROM TWO LANES TO FOUR LANES FROM POOKELA ROAD TO KAHEKILI HIGHWAY.					
		LAND			25		
		DESIGN			160		
		TOTAL FUNDING	TRN		185E		E
39.	S241	LIKELYLIKE HIGHWAY TRAFFIC IMPROVEMENTS, VALLEY VIEW DRIVE TO H-1, OAHU					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR TRAFFIC IMPROVEMENTS ON LIKELIKE HIGHWAY FROM VALLEY VIEW DRIVE TO INTERSTATE H-1. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND					1
		DESIGN					119
		CONSTRUCTION					1,540
		TOTAL FUNDING	TRN		B		1,660B
40.		INTERSECTION IMPROVEMENTS AT LIKELIKE HIGHWAY AND ALU STREET, OAHU					
		DESIGN AND CONSTRUCTION FOR INTERSECTION IMPROVEMENTS AT LIKELIKE HIGHWAY AND ALU STREET. PROJECT TO INCLUDE THE INSTALLATION OF TRAFFIC SIGNAL SYSTEM.					
		DESIGN			40		
		CONSTRUCTION			360		
		TOTAL FUNDING	TRN		400E		E
41.		FORT WEAVER ROAD, TRAFFIC SIGNAL INTERCONNECTION/ SYNCHRONIZATION, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INTERCONNECTION AND SYNCHRONIZATION OF TRAFFIC SIGNALS ON FORT WEAVER ROAD.					
		DESIGN			85		
		CONSTRUCTION			765		
		TOTAL FUNDING	TRN		850E		E
42.		KAMEHAMEHA HIGHWAY, DRAINAGE IMPROVEMENTS, KAHUKU, OAHU					
		CONSTRUCTION FOR THE INSTALLATION OF DRAINAGE SYSTEM IMPROVEMENTS IN THE VICINITY OF KAHUKU HIGH SCHOOL. PROJECT TO INCLUDE THE INSTALLATION OF DRAINAGE SYSTEM OF GRATED DROP INTAKES, CULVERTS, PIPE SYSTEM, AND CONCRETE LINED GUTTERS.					
		CONSTRUCTION			500		
		TOTAL FUNDING	AGS		500B		B
43.		MAUKA HIGHWAY, MAKAHA TO NANAKULI, OAHU					
		PLANS AND DESIGN FOR A MAUKA HIGHWAY AS AN ALTERNATIVE ROUTE TO FARRINGTON HIGHWAY FROM MAKAHA TO NANAKULI.					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		PLANS		100			
		DESIGN		100			
		TOTAL FUNDING	TRN	200B			B
44.		FARRINGTON HIGHWAY IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR STORAGE AND ACCELERATION LANES FOR INGRESS AND EGRESS IN THE VICINITY OF KAHE "TRACKS" BEACH PARK.					
		DESIGN		30			
		CONSTRUCTION		270			
		TOTAL FUNDING	TRN	300B			B
45.		INTERSTATE H-2, WAIPIO INTERCHANGE IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INTERSTATE H-2, WAIPIO INTERCHANGE IMPROVEMENTS INCLUDING A NEW WESTBOUND TO SOUTHBOUND LOOP ON-RAMP AND WIDENING OF THE EXISTING NORTHBOUND OFF-RAMP. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		700			
		CONSTRUCTION				19,108	
		TOTAL FUNDING	TRN	560N		15,168N	
			TRN	140R		3,940R	
46.	S242	OAHU DISTRICT BASEYARD, INSTALLATION OF FUEL STORAGE TANKS, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REMOVAL AND DISPOSAL OF THE EXISTING UNDERGROUND STORAGE TANKS, THE INSTALLATION OF FUEL STORAGE TANKS, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.					
		DESIGN		1			
		CONSTRUCTION		449			
		EQUIPMENT		50			
		TOTAL FUNDING	TRN	500B			B
47.		INTERSTATE H-2, MILILANI INTERCHANGE IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR INTERSTATE H-2, MILILANI INTERCHANGE IMPROVEMENTS. PROJECT TO INCLUDE A NEW SOUTHBOUND LOOP ONRAMP AND MODIFICATIONS TO THE EXISTING SOUTHBOUND ON AND OFF RAMPS, AND MODIFICATIONS TO MEHEULA PARKWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		500			
		CONSTRUCTION		7,000			
		TOTAL FUNDING	TRN	6,000N			N
			TRN	1,500R			R

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
48.		KUNIA ROAD WIDENING, SOUTH KUPUNA LOOP TO ANONUI STREET, OAHU					
		CONSTRUCTION FOR THE WIDENING OF KUNIA ROAD INCLUDING MODIFICATION OF LANE USE AND TRAFFIC SIGNALIZATION AT THE KUNIA ROAD/NORTH KUPUNA LOOP AND KUNIA ROAD/ SOUTH KUPUNA LOOP INTERSECTIONS; WIDENING OF EXISTING WESTBOUND OFF RAMP FROM H-1 TO NORTHBOUND KUNIA ROAD; AND TRAFFIC SIGNALIZATION AT THE KUNIA ROAD INTERSECTION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			4,000		
		TOTAL FUNDING	TRN		3,200N		N
			TRN		800R		R
49A.	R53	KAMEHAMEHA HIGHWAY, HELEMANO-WAIALUA JUNCTION TO HALEIWA BEACH PARK, OAHU					
		CONSTRUCTION FOR REALIGNMENT AND IMPROVEMENT OF HIGHWAY FROM HELEMANO-WAIALUA JUNCTION TO HALEIWA BEACH PARK. (SPECIAL FUNDS FROM DUTY FREE)					
		CONSTRUCTION				13,900	
		TOTAL FUNDING	TRN		B	13,900B	
49B.	R63	PUULOA ROAD-KAMEHAMEHA HIGHWAY TO SALT LAKE BOULEVARD, OAHU					
		LAND ACQUISITION AND CONSTRUCTION FOR WIDENING THE EXISTING TWO-LANE FACILITY FROM KAMEHAMEHA HIGHWAY TO SALT LAKE BOULEVARD. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND				2,320	
		CONSTRUCTION				4,132	
		TOTAL FUNDING	TRN		B	6,452B	
49C.	S21	CASTLE HILLS REPLACEMENT ACCESS ROAD, OAHU					
		CONSTRUCTION FOR THE REPLACEMENT OF THE PRESENT CASTLE HILLS SUBDIVISION ACCESS ON LIKELIKE HIGHWAY WITH A NEW ROADWAY TO KEAAHALA ROAD.					
		CONSTRUCTION				350	
		TOTAL FUNDING	TRN		E	350E	
49D.	X90	MATERIALS LAB, HAZARDOUS WASTE AND FLAMMABLE MATERIALS STORAGE SHED, OAHU					
		DESIGN AND CONSTRUCTION FOR A SHED AT THE MATERIALS TESTING LABORATORY FOR STORAGE OF HAZARDOUS WASTE AND FLAMMABLE MATERIALS.					
		DESIGN				1	
		CONSTRUCTION				140	
		TOTAL FUNDING	TRN		E	141E	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
49E.	X92	OAHU DISTRICT WAREHOUSE BUILDING, OAHU					
		DESIGN FOR A WAREHOUSE BUILDING AT THE OAHU DISTRICT BASEYARD AND FOR THE RENOVATION OF THE EXISTING WAREHOUSE INTO A HEAVY EQUIPMENT REPAIR SHOP.					
		DESIGN					110
		TOTAL FUNDING	TRN		E		110E
49F.	X93	UPGRADE OF AIR CONDITIONING SYSTEM, MATERIALS TESTING LABORATORY, OAHU					
		DESIGN AND CONSTRUCTION FOR THE REMOVAL AND UPGRADE OF THE AIR CONDITIONING SYSTEM AT THE MATERIALS TESTING LABORATORY BUILDING.					
		DESIGN					45
		CONSTRUCTION					352
		TOTAL FUNDING	TRN		E		397E
49G.	S243	KAILUA ROAD SHOULDER IMPROVEMENTS FOR BICYCLE ROUTE, OAHU					
		DESIGN AND CONSTRUCTION FOR KAILUA ROAD BICYCLE ROUTE FROM KALANIANAOLE HIGHWAY TO HAMAKUA DRIVE. PROJECT TO INCLUDE THE UPGRADING AND PAVING OF ROADWAY SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					2
		CONSTRUCTION					203
		TOTAL FUNDING	TRN		E		42E
			TRN		N		163N
49H.	S244	ALA MOANA BOULEVARD IMPROVEMENTS, ATKINSON DRIVE TO KALAKAUA AVENUE, OAHU					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO ALA MOANA BOULEVARD. PROJECT TO INCLUDE THE CONSTRUCTION OF A RIGHT TURN LANE FROM ALA MOANA BOULEVARD INTO ATKINSON DRIVE AND TO PROVIDE LANDSCAPING AND OTHER ROADWAY IMPROVEMENTS ON ALA MOANA BOULEVARD FROM ATKINSON DRIVE TO KALAKAUA AVENUE. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND					600
		DESIGN					1,000
		CONSTRUCTION					500
		TOTAL FUNDING	TRN		B		2,100B
49I.	S245	KALANIANAOLE HIGHWAY SHOULDER IMPROVEMENTS FOR BICYCLE ROUTE, OAHU					



## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN AND CONSTRUCTION FOR KALANIANA'OLE HIGHWAY BICYCLE ROUTE FROM SANDY BEACH TO WAIMANALO BEACH PARK. PROJECT TO INCLUDE UPGRADING AND PAVING OF ROADWAY SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					2
		CONSTRUCTION					486
		TOTAL FUNDING	TRN		E		98E
			TRN		N		390N
49J.	S246	INTERSTATE ROUTE H-1 CONTRAFLOW/SHOULDER LANE, WAIAWA TO KEEHI INTERCHANGE, OAHU					
		DESIGN AND CONSTRUCTION FOR A CONTRAFLOW LANE FROM WAIAWA INTERCHANGE TO PEARL HARBOR INTERCHANGE AND A SHOULDER LANE FROM PEARL HARBOR INTERCHANGE TO KEEHI INTERCHANGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN					850
		CONSTRUCTION					17,000
		TOTAL FUNDING	TRN		B		17,850B
49K.	S247	SHOULDER IMPROVEMENTS FOR BICYCLE ROUTES AT VARIOUS LOCATIONS, OAHU					
		DESIGN AND CONSTRUCTION FOR BICYCLE ROUTES ON KALANIANA'OLE HIGHWAY FROM KALANI'IKI STREET TO AINAKOA AVENUE; WAIALAE AVENUE FROM KEALAOLU AVENUE TO KALANIANA'OLE HIGHWAY; WAIALAE AVENUE FROM 17TH AVENUE TO 21ST AVENUE; AND NIMITZ HIGHWAY FROM QUEEN STREET TO WAIAKAMILO ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					2
		CONSTRUCTION					486
		TOTAL FUNDING	TRN		E		98E
			TRN		N		390N
49L.	S248	INTERSTATE ROUTE H-1 WIDENING, WAIAWA INTERCHANGE TO HALAWA INTERCHANGE, OAHU					
		PLANS FOR THE WIDENING OF INTERSTATE ROUTE H-1 FROM WAIAWA INTERCHANGE TO HALAWA INTERCHANGE TO SIX LANES IN EACH DIRECTION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (SPECIAL FUNDS FROM DUTY FREE)					
		PLANS					1,800

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		TOTAL FUNDING	TRN		B		1,800B
49M.		INTERSTATE H-1, MAKAKILO INTERCHANGE IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR THE INTERSTATE H-1, MAKAKILO INTERCHANGE IMPROVEMENTS INCLUDING MODIFICATIONS TO THE WESTBOUND OFF-RAMP AND THE NORTHBOUND TO EASTBOUND ON-RAMP. THE EXPENDITURE OF FUNDS WOULD BE SUBJECT TO THE AVAILABILITY OF FUNDS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					8,100
		TOTAL FUNDING	TRN		N		6,480N
			TRN		R		1,620R
49N.		KAMEHAMEHA HIGHWAY LIGHTING, ACACIA ROAD TO HONOMANU STREET, OAHU					
		DESIGN AND CONSTRUCTION FOR KAMEHAMEHA HIGHWAY LIGHTING IMPROVEMENTS FROM THE VICINITY OF ACACIA ROAD TO THE VICINITY OF HONOMANU STREET. PROJECT TO INCLUDE THE REMOVAL OF EXISTING WOODEN OVERHEAD POLES AND THE INSTALLATION OF NEW HIGHWAY LIGHTING POLES AND UNDERGROUND WIRING. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN					200
		CONSTRUCTION					2,000
		TOTAL FUNDING	TRN		B		2,200B
49O.	S220	KALANIANA'OLE HIGHWAY CONCRETE WALL, HANAUMA BAY TO SANDY BEACH, OAHU					
		DESIGN AND CONSTRUCTION FOR A CONCRETE, SIMULATED ROCK WALL TO ELIMINATE THE RECURRING PROBLEM OF METAL GUARDRAIL CORROSION FROM HANAUMA BAY TO THE SANDY BEACH AREA. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					140
		CONSTRUCTION					10,331
		TOTAL FUNDING	TRN		E		140E
			TRN		N		10,331N
49P.		INTERSECTION IMPROVEMENTS AT FARRINGTON HIGHWAY AND MALIONA STREET, OAHU					
		DESIGN AND CONSTRUCTION FOR INTERSECTION IMPROVEMENTS AT FARRINGTON HIGHWAY AND MALIONA STREET TO INCLUDE THE INSTALLATION OF TRAFFIC LIGHTS.					
		DESIGN					50
		CONSTRUCTION					350

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		TOTAL FUNDING	TRN		B		400B
49Q.	Q58	INTERSTATE ROUTE H-1, KUNIA INTERCHANGE IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR THE RECONFIGURATION OF THE KUNIA INTERCHANGE RAMPS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				18,793	
		TOTAL FUNDING	TRN		E	1,700E	
			TRN		N	17,093N	
49R.		FARRINGTON HIGHWAY, SIDEWALKS BETWEEN PAIWA AND PUPUPUHI STREETS, OAHU					
		DESIGN FOR SIDEWALKS ALONG THE MAKAI SIDE OF FARRINGTON HIGHWAY BETWEEN PAIWA (AWANUI) AND PUPUPUHI STREETS.					
		DESIGN				150	
		TOTAL FUNDING	TRN		B	150B	
49S.		FARRINGTON HIGHWAY, RETAINING WALL, OAHU					
		DESIGN AND CONSTRUCTION FOR A RETAINING WALL ALONG FARRINGTON HIGHWAY BETWEEN WAIPIO ACCESS ROAD AND PAIWA (AWANUI) STREET.					
		DESIGN				60	
		CONSTRUCTION				390	
		TOTAL FUNDING	TRN		B	450B	
49T.		MAHIOLE STREET IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR ROAD AND SHOULDER IMPROVEMENTS ON AND IN THE VICINITY OF MAHIOLE STREET. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS AND OTHER RELATED WORK.					
		DESIGN				40	
		CONSTRUCTION				110	
		TOTAL FUNDING	TRN		B	150B	
49U.		WATER SOURCES FOR DEPARTMENT OF TRANSPORTATION HIGHWAYS DIVISION, OAHU					
		CONSTRUCTION FOR THE PURCHASE OF WATER SOURCE SUPPLY FROM THE CITY AND COUNTY OF HONOLULU BOARD OF WATER SUPPLY.					
		CONSTRUCTION				2,940	
		TOTAL FUNDING	TRN		B	2,940B	
49V.	S252	MOANALUA ROAD WIDENING, PALI MOMI STREET TO AIEA INTERCHANGE, OAHU					
		CONSTRUCTION FOR WIDENING OF MOANALUA ROAD FROM PALI MOMI STREET TO AIEA INTERCHANGE. (SPECIAL FUNDS FROM DUTY FREE)					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		CONSTRUCTION					
		TOTAL FUNDING	TRN		B		1,800
							1,800B
49W.	S253	INTERSTATE ROUTE H-1, PUNAHOU STREET OFF-RAMP IMPROVEMENTS, OAHU					
		LAND ACQUISITION AND DESIGN FOR THE WIDENING OF INTERSTATE ROUTE H-1 PUNAHOU STREET OFF-RAMP.					
		LAND DESIGN					1
		TOTAL FUNDING	TRN		E		999
							1,000E
49X.		INTERSTATE ROUTE H-1, LUNALILO STREET OFF-RAMP AND ON-RAMP, OAHU					
		PLANS FOR IMPROVEMENTS TO THE LUNALILO STREET OFF-RAMP AND ON-RAMP.					
		PLANS					1,000
		TOTAL FUNDING	TRN		E		1,000E
TRN511 - HAWAII HIGHWAYS							
50.	T27	HAWAII BELT ROAD: REPLACEMENT OF 5 BRIDGES, HAMAKUA, HAWAII					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR HAWAII BELT ROAD IMPROVEMENTS, HAMAKUA, HAWAII. REPLACE EXISTING WOODEN BRIDGES AT KAINEHE, KAHOLALELE, PAAUILO SCHOOL, AND EAST PAAUILO STREAMS AND CONCRETE BRIDGE AT KEALAKAHA STREAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND DESIGN			100		
		CONSTRUCTION			600		
		TOTAL FUNDING	TRN				14,000
			TRN		700E		2,800E
					N		11,200N
51.	T77	GUARDRAIL AND SHOULDER IMPROVEMENTS ON VARIOUS STATE HIGHWAYS, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE AND SURFACE TREATMENT OR PAVING. PROJECT TO INCLUDE THE INSTALLATION OF METAL GUARDRAILS AND MODERNIZATION OF EXISTING GUARDRAILS AT VARIOUS STATE HIGHWAY LOCATIONS ON HAWAII. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			50		50
		CONSTRUCTION			1,000		1,000
		TOTAL FUNDING	TRN		184E		184E
			TRN		866N		866N

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
52.	T79	HAWAII BELT ROAD, DRAINAGE IMPROVEMENTS, DISTRICT OF KAU, HAWAII					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR HYDROLOGIC STUDIES OF DRAINAGE BASINS WHICH CAUSE FLOODING OF HAWAII BELT ROAD AND SUBSEQUENT DRAINAGE IMPROVEMENTS INCLUDING NEW STRUCTURES.					
		LAND		100			
		DESIGN		150			
		CONSTRUCTION		1,000			600
		TOTAL FUNDING	TRN	1,250E			600E
53.	T82	WIDENING OF QUEEN KAAHUMANU HIGHWAY, HAWAII					
		LAND ACQUISITION AND DESIGN FOR THE WIDENING OF QUEEN KAAHUMANU HIGHWAY TO A FOUR-LANE DIVIDED HIGHWAY FROM PALANI ROAD TOWARDS KAWAIIHAE INCLUDING PAVED SHOULDERS FOR A BIKE ROUTE. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND					6,500
		DESIGN					4,900
		TOTAL FUNDING	TRN		B		11,400B
54.	T110	HAWAII BELT ROAD, ROCKFALL PROTECTION AT MAULUA, LAUPAHOEHOE AND KAAWALII, HAWAII					
		DESIGN FOR THE DETERMINATION OF ALTERNATIVES, ESTIMATED COSTS, AND RECOMMENDATIONS FOR ROCKFALL PROTECTION AT MAULUA, LAUPAHOEHOE AND KAAWALII. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					300
		TOTAL FUNDING	TRN		E		75E
			TRN		N		225N
55.	T111	TRAFFIC SIGNALS AT KUAKINI HIGHWAY, ROUTE 11 AND SEAVIEW CIRCLE, HAWAII					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE INSTALLATION OF TRAFFIC SIGNALS AND IMPROVEMENTS AT KUAKINI HIGHWAY AND SEAVIEW CIRCLE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND		10			
		DESIGN		50			
		CONSTRUCTION					600
		TOTAL FUNDING	TRN	19E			120E
			TRN	41N			480N
56.	T112	REPLACE BRIDGES AT KUPAPAUHUA, PEPOO, AUWAIKEAKUA, AND HALAULANI, HAWAII					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE REPLACEMENT OF TWO TIMBER BRIDGES (AUWAIKEAKUA AND PEPOO), A TIMBER-STEEL GIRDER (HALAULANI) AND A T-GIRDER CONCRETE ARCH BRIDGE (KUPAPAUUA). THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND				3,905	
		DESIGN		3,330			
		CONSTRUCTION				11,410	
		TOTAL FUNDING	TRN	830E		3,280E	
			TRN	2,500N		12,035N	
57.	T115	QUEEN KAAHUMANU HIGHWAY SHOULDER IMPROVEMENTS FOR BICYCLE ROUTE, HAWAII					
		DESIGN AND CONSTRUCTION FOR SHOULDER IMPROVEMENTS FOR BICYCLE ROUTE FROM KEAHOLE TO KAWAIHAE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		40			
		CONSTRUCTION		500			
		TOTAL FUNDING	TRN	117E			E
			TRN	423N			N
58.		HILO WATERFRONT ROAD, WAILOA RIVER BRIDGE TO HILO WHARF, HAWAII					
		CONSTRUCTION FOR THE IMPROVEMENT OF HIGHWAY FROM THE VICINITY OF WAILOA RIVER BRIDGE TO HILO WHARF INCLUDING THE REPLACEMENT OF WAILOA RIVER BRIDGE.					
		CONSTRUCTION		700			
		TOTAL FUNDING	TRN	700E			E
59.		HAWAII BIKEWAYS, HAWAII					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A BIKEWAY ON HAWAII. PROJECT TO INCLUDE IMPROVEMENTS ON KANOELEHUA AVENUE/HIGHWAY 11 FROM WAILOA STATE PARK TO KEAAU-PAHOA ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		80			
		LAND		1			
		DESIGN		79			
		CONSTRUCTION		840			
		TOTAL FUNDING	TRN	200E			E
			TRN	800N			N
59A.	T07	HAWAII BELT ROAD, MUD LANE TO THE KAMUELA RACE TRACK, HAWAII					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		PLANS FOR WIDENING AND/OR REALIGNING OF HIGHWAY BETWEEN MUD LANE AND KAMUELA RACE TRACK IN SOUTH KOHALA, HAWAII. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (SPECIAL FUNDS FROM DUTY FREE)					
		PLANS				1,139	
		TOTAL FUNDING	TRN		B	1,139B	
59B.	T64	KEAAU-PAHOA ROAD, KEAAU TOWN SECTION, HAWAII					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A NEW ROADWAY AROUND KEAAU TOWN TO REDUCE TRAFFIC CONGESTION WITHIN THE TOWN. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND				650	
		DESIGN				340	
		CONSTRUCTION				6,646	
		TOTAL FUNDING	TRN		B	7,636B	
59C.	T85	KEALAKEHE PARKWAY, HAWAII					
		LAND ACQUISITION AND DESIGN FOR A NEW MAUKA-MAKAI ROADWAY FROM MAMALAHOA HIGHWAY TRAVERSING THROUGH KEALAKEHE AND CONNECTING TO QUEEN KAAHUMANU HIGHWAY. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND				4,500	
		DESIGN				4,400	
		TOTAL FUNDING	TRN		B	8,900B	
59D.	T108	SADDLE ROAD EXTENSION, HAWAII					
		PLANS FOR A NEW ROADWAY AND/OR REALIGNMENT AND EXTENDING THE SADDLE ROAD FROM THE HILO TERMINUS TO THE QUEEN KAAHUMANU HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS				2,050	
		TOTAL FUNDING	TRN		E	410E	
			TRN		N	1,640N	
59E.	T109	SOUTH KONA BASEYARD, FUEL STORAGE SYSTEM, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REMOVAL OF UNDERGROUND FUEL STORAGE TANKS AND FUEL DISPENSING SYSTEM. PROJECT TO INCLUDE THE INSTALLATION OF NEW FUEL STORAGE SYSTEM, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.					
		DESIGN				8	
		CONSTRUCTION				165	
		EQUIPMENT				50	
		TOTAL FUNDING	TRN		E	223E	

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
59F.		KUAKINI HIGHWAY IMPROVEMENTS, HAWAII					
		DESIGN FOR THE WIDENING OF KUAKINI HIGHWAY AND THE INSTALLATION OF A 50-FOOT LONG LEFT TURN STORAGE LANE AT IHILANI STREET. PROJECT TO INCLUDE RETAINING WALLS, SHOULDER LANE, STREET LIGHTS, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					50
		TOTAL FUNDING	TRN		B		50B
TRN531 - MAUI HIGHWAYS							
60. V48		GUARDRAIL AND SHOULDER IMPROVEMENTS ON VARIOUS STATE HIGHWAYS, MAUI					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE AND SURFACE TREATMENT OR PAVING. PROJECT TO INCLUDE THE INSTALLATION OF METAL GUARDRAILS AT VARIOUS STATE HIGHWAY LOCATIONS ON MAUI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			120		120
		CONSTRUCTION			1,400		
		TOTAL FUNDING	TRN		400E		52E
			TRN		1,120N		68N
61. V62		KAAHUMANU AVENUE, TRAFFIC SIGNAL UPGRADE, MAUI					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF EXISTING TRAFFIC SIGNAL SYSTEM ON KAAHUMANU AVENUE FROM HANA HIGHWAY TO WAILUKU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			70		
		CONSTRUCTION					500
		TOTAL FUNDING	TRN		12E		100E
			TRN		58N		400N
62. V63		KAHULUI AIRPORT ACCESS ROAD, MAUI					
		CONSTRUCTION FOR AN ACCESS ROAD FROM PUUNENE AVENUE TO KAHULUI AIRPORT. PROJECT TO INCLUDE AN INTERCHANGE AT HANA HIGHWAY, STRIPING, LANDSCAPING, DRAINAGE, LIGHTING, UTILITIES, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (SPECIAL FUNDS FROM DUTY FREE)					
		CONSTRUCTION			50,000		
		TOTAL FUNDING	TRN		10,000B		B
			TRN		40,000N		N



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
63.		KAAHUMANU AVENUE, KAHULUI, MAUI					
		DESIGN AND CONSTRUCTION FOR A LEFT TURN DECELERATION LANE OFF OF KAAHUMANU AVENUE, INTO HOALOHA PARK, KAHULUI, MAUI.					
		DESIGN			10		
		CONSTRUCTION			90		
		TOTAL FUNDING	TRN		100E		E
64.	C64	MAUI BIKEWAYS, MAUI					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR BIKEWAYS ON MAUI. PROJECT TO INCLUDE IMPROVEMENTS ON HONOAPIILANI HIGHWAY FROM SHAW STREET TO MAALAEA HARBOR AND KEKAULIKE AVENUE FROM KULA HIGHWAY TO HALEAKALA HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			80		
		LAND			1		
		DESIGN			79		
		CONSTRUCTION			840		
		TOTAL FUNDING	TRN		200E		E
			TRN		800N		N
65.		INTERSECTION IMPROVEMENTS AT DICKENSON STREET AND HONOAPIILANI HIGHWAY, MAUI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR INTERSECTION IMPROVEMENTS AT DICKENSON STREET AND HONOAPIILANI HIGHWAY. PROJECT TO INCLUDE THE INSTALLATION OF TRAFFIC SIGNALS AND OTHER RELATED WORK.					
		LAND			1		
		DESIGN			49		
		CONSTRUCTION			350		
		TOTAL FUNDING	TRN		400B		B
66.		TRAFFIC SIGNALS ON HONOAPIILANI HIGHWAY AT LAHAINALUNA ROAD, MAUI					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO TRAFFIC SIGNALS ON HONOAPIILANI HIGHWAY AT LAHAINALUNA ROAD.					
		DESIGN			10		
		CONSTRUCTION			65		
		TOTAL FUNDING	TRN		75B		B
67.	V15	KEANAE BASEYARD, BASEYARD FACILITIES AND FUEL STORAGE TANKS, MAUI					

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW BASEYARD FACILITY TO INCLUDE AN OFFICE BUILDING, STORAGE SHED, MOTOR VEHICLE SHED, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES. PROJECT SHALL INCLUDE THE DEMOLITION AND REMOVAL OF THE EXISTING BASEYARD FACILITIES INCLUDING THE EXISTING UNDERGROUND FUEL STORAGE TANKS.					
		DESIGN		45			
		CONSTRUCTION		2,050			
		EQUIPMENT		50			
		TOTAL FUNDING	TRN	2,145B			B
67A.	V04	HONOAPIILANI HIGHWAY WIDENING, KUIHELANI HIGHWAY TO MAALAEA HARBOR, MAUI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE WIDENING OF HONOAPIILANI HWY, FROM KUIHELANI HWY TO THE MAALAEA HARBOR ENTRANCE TO A FOUR LANE DIVIDED HIGHWAY TO PROVIDE ADDITIONAL CAPACITY AT CONVERGENCE OF HONOAPIILANI HWY, NORTH KIHEI RD AND KUIHELANI HWY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND				3,140	
		DESIGN				150	
		CONSTRUCTION				10,400	
		TOTAL FUNDING	TRN		B	3,436B	
			TRN		N	10,254N	
67B.	V42	HALEAKALA HIGHWAY WIDENING, PUKALANI BYPASS TO HANA HIGHWAY, MAUI					
		LAND ACQUISITION AND CONSTRUCTION FOR THE WIDENING OF HALEAKALA HIGHWAY FROM THREE TO FOUR LANES BETWEEN PUKALANI BYPASS AND HANA HIGHWAY. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND				940	
		CONSTRUCTION				13,308	
		TOTAL FUNDING	TRN		B	14,248B	
67C.	V51	HONOAPIILANI HIGHWAY WIDENING AND/OR REALIGNMENT, HONOKOWAI TO PUAMANA, MAUI					
		DESIGN FOR THE WIDENING OF THE EXISTING HIGHWAY AND/OR A NEW ALIGNMENT FROM HONOKOWAI TO PUAMANA, LAHAINA. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN				3,870	
		TOTAL FUNDING	TRN		B	3,870B	
67D.	V60	KIHEI-UPCOUNTRY HIGHWAY, MAUI					

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN FOR A TWO-LANE HIGHWAY FROM KIHEI TO UPCOUNTRY MAUI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				1,762	
		TOTAL FUNDING	TRN		E	352E	
			TRN		N	1,410N	
67E.	V64	INSTALLATION OF HIGHWAY LIGHTING, HONOAPIILANI HIGHWAY, MAUI					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF HIGHWAY LIGHTING AT THE INTERSECTION OF HONOAPIILANI HIGHWAY AND OFFICE ROAD.					
		DESIGN				2	
		CONSTRUCTION				30	
		TOTAL FUNDING	TRN		E	32E	
67F.	V65	ACCESS TO MAILEPAI SUBDIVISION, HONOAPIILANI HIGHWAY, MAUI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR AN ACCESS TO MAILEPAI SUBDIVISION FROM HONOAPIILANI HIGHWAY. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND				60	
		DESIGN				2	
		CONSTRUCTION				82	
		TOTAL FUNDING	TRN		B	144B	
67G.	V66	KAHEKILI HIGHWAY IMPROVEMENTS, MAUI					
		DESIGN AND CONSTRUCTION FOR DRAINAGE AND SAFETY IMPROVEMENTS TO KAHEKILI HIGHWAY IN THE VICINITY OF MALUHIA BOY SCOUT CAMP.					
		DESIGN				3	
		CONSTRUCTION				97	
		TOTAL FUNDING	TRN		E	100E	
67H.	V67	HANA HIGHWAY DRAINAGE AND SAFETY IMPROVEMENTS, MAUI					
		DESIGN AND CONSTRUCTION FOR DRAINAGE AND SAFETY IMPROVEMENTS TO HANA HIGHWAY IN THE VICINITY OF KEANAE.					
		DESIGN				4	
		CONSTRUCTION				368	
		TOTAL FUNDING	TRN		E	372E	
67I.	V68	HONOAPIILANI HIGHWAY WIDENING, KAA NAPALI PARKWAY TO LOWER HONOAPIILANI ROAD, MAUI					
		CONSTRUCTION FOR THE WIDENING OF HONOAPIILANI HIGHWAY FROM TWO TO FOUR LANES BETWEEN KAA NAPALI PARKWAY TO LOWER HONOAPIILANI ROAD. (SPECIAL FUNDS FROM DUTY FREE)					
		CONSTRUCTION				7,600	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		TOTAL FUNDING	TRN		B		7,600B
67J.	V69	WAIEHU BEACH ROAD, DOUBLE LEFT TURN INTO KAHULUI BEACH ROAD, MAUI					
		DESIGN AND CONSTRUCTION FOR A DOUBLE LEFT TURN LANE ON WAIEHU BEACH ROAD INTO KAHULUI BEACH ROAD. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN					60
		CONSTRUCTION					700
		TOTAL FUNDING	TRN		B		760B
67K.	V70	PUUNENE AVENUE WIDENING, MAUI					
		PLANS FOR THE WIDENING OF PUUNENE AVENUE TO A FOUR LANE HIGHWAY FROM KUIHELANI HIGHWAY TO PUUNENE. (SPECIAL FUNDS FROM DUTY FREE)					
		PLANS					250
		TOTAL FUNDING	TRN		B		250B
67L.	V43	PIILANI HIGHWAY, KIHEI TO ULUPALAKUA, MAUI					
		PLANS FOR AN UPDATED PLAN TO CONSTRUCT AND IMPROVE PIILANI HIGHWAY FROM KIHEI TO ULUPALAKUA.					
		PLANS					100
		TOTAL FUNDING	TRN		E		100E
67M.	V71	HALEAKALA HIGHWAY, RIGHT TURN DECELERATION LANE AT MAKANI STREET, MAUI					
		DESIGN AND CONSTRUCTION FOR A RIGHT TURN DECELERATION LANE ON HALEAKALA HIGHWAY AT MAKANI STREET. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN					30
		CONSTRUCTION					170
		TOTAL FUNDING	TRN		B		200B
67N.	V14	KUIHELANI HIGHWAY WIDENING, HONOAPIILANI HIGHWAY TO PUUNENE AVENUE, MAUI					
		DESIGN FOR THE WIDENING OF KUIHELANI HIGHWAY, FROM HONOAPIILANI HIGHWAY TO PUUNENE AVENUE FROM TWO TO FOUR LANES. (SPECIAL FUNDS FROM DUTY FREE)					
		DESIGN					1,000
		TOTAL FUNDING	TRN		B		1,000B
67O.	V72	HANA HIGHWAY, VICINITY OF MILE POST 14.39, MAUI					
		DESIGN AND CONSTRUCTION FOR ROADWAY AND DRAINAGE IMPROVEMENTS ON HANA HIGHWAY, IN THE VICINITY OF MILE POST 14.39. IMPROVEMENTS TO INCLUDE STABILIZING SLOPES, REALIGNING THE ROADWAY, AND INSTALLING A DRAINAGE SYSTEM.					
		DESIGN					5

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		CONSTRUCTION					4,100
		TOTAL FUNDING	TRN		E		4,105E

## TRN541 - MOLOKAI HIGHWAYS

68. W08 GUARDRAIL AND SHOULDER IMPROVEMENTS ON VARIOUS STATE HIGHWAYS, MOLOKAI

DESIGN AND CONSTRUCTION FOR THE UPGRADE OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE AND SURFACE TREATMENT OR PAVING. PROJECT TO INCLUDE THE INSTALLATION OF METAL GUARDRAILS AT VARIOUS STATE HIGHWAY LOCATIONS ON MOLOKAI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN			60	
CONSTRUCTION				600
TOTAL FUNDING	TRN		26E	120E
	TRN		34N	480N

## TRN551 - LANAI HIGHWAYS

69. W58 GUARDRAIL AND SHOULDER IMPROVEMENTS ON VARIOUS STATE HIGHWAYS, LANAI

DESIGN AND CONSTRUCTION FOR THE UPGRADE OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE AND SURFACE TREATMENT OR PAVING. PROJECT TO INCLUDE THE INSTALLATION OF METAL GUARDRAILS AND MODERNIZATION OF EXISTING GUARDRAILS AT VARIOUS STATE HIGHWAY LOCATIONS ON LANAI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN			36	
CONSTRUCTION				360
TOTAL FUNDING	TRN		9E	90E
	TRN		27N	270N

## TRN561 - KAUAI HIGHWAYS

70. X51 GUARDRAIL AND SHOULDER IMPROVEMENTS ON VARIOUS STATE HIGHWAYS, KAUAI

DESIGN AND CONSTRUCTION FOR THE UPGRADE OF EXISTING DIRT OR SOD SHOULDERS WITH STABILIZED BASE AND SURFACE TREATMENT OR PAVING. PROJECT TO INCLUDE THE INSTALLATION OF METAL GUARDRAILS AND MODERNIZATION OF EXISTING GUARDRAILS AT VARIOUS STATE HIGHWAY LOCATIONS ON KAUAI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN			100		100
		CONSTRUCTION			1,000		
		TOTAL FUNDING	TRN		243E		23E
			TRN		857N		77N
71. X75		KAUMUALII HIGHWAY IMPROVEMENTS AT JUNCTION WITH HALEWILI ROAD, KAUAI					
		LAND ACQUISITION AND CONSTRUCTION FOR THE CONVERSION OF THE SKEWED INTERSECTION TO STANDARD INTERSECTION WITH PROVISIONS FOR LEFT-TURN STORAGE LANE ON KAUMUALII HIGHWAY AND PROVISIONS FOR LEFT-TURN AND RIGHT-TURN LANES ON HALEWILI ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			380		
		CONSTRUCTION			1,417		
		TOTAL FUNDING	TRN		663E		E
			TRN		1,134N		N
72.		KAUAI BIKEWAYS, KAUAI					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A BIKEWAY ON KAUAI. PROJECT TO INCLUDE IMPROVEMENTS ON KAUMUALII HIGHWAY FROM RICE STREET TO HANAPEPE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			80		
		LAND			1		
		DESIGN			79		
		CONSTRUCTION			840		
		TOTAL FUNDING	TRN		200E		E
			TRN		800N		N
73.		AHUKINI ROAD, KAUAI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO AHUKINI ROAD FROM KAPULE HIGHWAY TO HANAMAULU BAY BY RESURFACING, REALIGNING, WIDENING AND/OR BYPASSING THE EXISTING HIGHWAY TO INCLUDE NECESSARY SIGNAGE, UTILITIES, AND OTHER MISCELLANEOUS IMPROVEMENTS. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND			1		
		DESIGN			499		
		CONSTRUCTION			3,000		
		TOTAL FUNDING	TRN		3,500B		B
73A. X60		INTERSECTION IMPROVEMENTS AT KAUMUALII HIGHWAY AND KOLOA ROAD, KAUAI					

## CAPITAL IMPROVEMENT PROJECTS

			APPROPRIATIONS (IN 000's)				
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		LAND ACQUISITION AND CONSTRUCTION FOR INTERSECTION IMPROVEMENTS AT KAUMUALII HIGHWAY AND KOLOA ROAD. PROJECT TO INCLUDE LEFT-TURN AND RIGHT-TURN LANES AND TRAFFIC SIGNAL SYSTEM WITH THE ADDITION OF TWO LANES TO LAWAI BRIDGE. (SPECIAL FUNDS FROM DUTY FREE)					
		LAND					200
		CONSTRUCTION					2,516
		TOTAL FUNDING	TRN		B		2,716B
73B.	X101	SHOULDER IMPROVEMENTS FOR BICYCLE ROUTE ON KUHIO HIGHWAY, KAUAI					
		DESIGN AND CONSTRUCTION FOR BICYCLE ROUTE ON KUHIO HIGHWAY FROM LIHUE TO KAPAA AND HANAIEI TOWARDS HAENA. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					2
		CONSTRUCTION					405
		TOTAL FUNDING	TRN		E		82E
			TRN		N		325N
73C.	X102	INSTALLATION OF FUEL STORAGE TANKS AND FUEL DISPENSING SYSTEM, KAUAI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FUEL STORAGE TANKS AND FUEL DISPENSING SYSTEM. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.					
		DESIGN					35
		CONSTRUCTION					245
		EQUIPMENT					50
		TOTAL FUNDING	TRN		E		330E
73D.	X103	LIHUE GATEWAY BEAUTIFICATION, AHUKINI ROAD AND KAPULE HIGHWAY, KAUAI					
		DESIGN AND CONSTRUCTION FOR LANDSCAPING AHUKINI ROAD FROM KUHIO HIGHWAY TO THE AIRPORT AND KAPULE HIGHWAY FROM RICE STREET TO KUHIO HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					200
		CONSTRUCTION					5,000
		TOTAL FUNDING	TRN		E		200E
			TRN		N		4,000N
			TRN		R		1,000R
73E.	X104	KUHIO HIGHWAY WIDENING, WAILUA TO KAPAA, KAUAI					
		PLANS FOR WIDENING KUHIO HIGHWAY FROM WAILUA TO KAPAA FROM TWO TO FOUR LANES. (SPECIAL FUNDS FROM DUTY FREE)					
		PLANS					1,000

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		TOTAL FUNDING	TRN		B		1,000B
73F.	X63	KAUMUALII HIGHWAY SHORING CAUSEWAY, KAUAI					
		CONSTRUCTION FOR INTERSECTION IMPROVEMENTS AT KAUMUALII HIGHWAY, KUHIO HIGHWAY, AND RICE STREET INTERSECTIONS. PROJECT TO INCLUDE REALIGNMENT OF KAUMUALII HIGHWAY, RELOCATION OF UTILITY POLES, DRAINAGE IMPROVEMENTS, AND RECONSTRUCTION OF TRAFFIC SIGNALS. (SPECIAL FUNDS FROM DUTY FREE)					
		CONSTRUCTION					6,000
		TOTAL FUNDING	TRN		B		6,000B
73G.		LEFT TURN LANE ON HAUAALA ROAD AND KAWAIHAU ROAD, KAPAA, KAUAI					
		DESIGN AND CONSTRUCTION FOR A LEFT TURN STORAGE LANE FROM KUHIO HIGHWAY TO HAUAALA AND KAWAIHAU ROAD.					
		DESIGN					150
		CONSTRUCTION					700
		TOTAL FUNDING	TRN		B		850B
73H.	X06	IMPROVEMENTS TO KAUMUALII HIGHWAY, LIHUE TO WEST OF MALUHIA ROAD, KAUAI					
		PLANS FOR WIDENING KAUMUALII HIGHWAY FROM LIHUE TO WEST OF MALUHIA ROAD FROM TWO TO FOUR LANES. (SPECIAL FUNDS FROM DUTY FREE)					
		PLANS					2,000
		TOTAL FUNDING	TRN		B		2,000B
73I.	X100	KUHIO HIGHWAY RETAINING WALLS AT LUMAHAI AND WAINIHA, KAUAI					
		DESIGN AND CONSTRUCTION FOR RETAINING WALLS TO PREVENT SLIPPAGE OF THE ROADWAY.					
		DESIGN					15
		CONSTRUCTION					1,450
		TOTAL FUNDING	TRN		E		1,465E
TRN595 - HIGHWAYS ADMINISTRATION							
74.	X91	WHEELCHAIR RAMPS AT VARIOUS LOCATIONS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR WHEELCHAIR RAMPS AT VARIOUS LOCATIONS ALONG STATE HIGHWAYS, STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			75		
		CONSTRUCTION			500		
		TOTAL FUNDING	TRN		175E		E



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
			TRN		400N		N
75.	X96	CLOSEOUT OF HIGHWAY RIGHTS-OF-WAY, STATEWIDE					
		LAND ACQUISITION FOR CLEAR TITLE TO REAL PROPERTY USED FOR THE CONSTRUCTION OF PREVIOUS HIGHWAY PROJECTS WHERE APPLICABLE, TO PROVIDE FOR THE TRANSFER OF REAL PROPERTY INTEREST FROM THE STATE TO THE COUNTIES FOR THE IMPLEMENTATION OF THE STATE HIGHWAY SYSTEM.					
		LAND			300		300
		TOTAL FUNDING	TRN		300E		300E
76.	X97	MISCELLANEOUS DRAINAGE IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS TO EXISTING HIGHWAY FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			130		130
		CONSTRUCTION					900
		TOTAL FUNDING	TRN		55E		235E
			TRN		75N		795N
77.	X98	IMPROVEMENTS TO INTERSECTIONS AND HIGHWAY FACILITIES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR TRAFFIC SAFETY. PROJECT TO INCLUDE THE ELIMINATION OF CONSTRUCTIONS ON- AND OFF-SITE AFFECTING EFFICIENT FLOW OF TRAFFIC ON INTERSTATE HIGHWAYS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			375		375
		CONSTRUCTION			2,500		2,500
		TOTAL FUNDING	TRN		875E		875E
			TRN		2,000N		2,000N
78.	X99	HIGHWAY PLANNING, STATEWIDE					
		PLANS FOR ROAD USE, ROAD LIFE, ECONOMIC STUDIES, RESEARCH AND ADVANCED PLANNING OF FEDERAL AID AND NON-FEDERAL AID HIGHWAY PROJECTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			7,500		2,000
		TOTAL FUNDING	TRN		2,500E		450E
			TRN		5,000N		1,550N
79.	X220	INSTALLATION OF EMERGENCY TELEPHONES AT VARIOUS LOCATIONS, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF EMERGENCY SOLAR POWERED TELEPHONES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			30		30
		CONSTRUCTION			900		900
		TOTAL FUNDING	TRN		210E		210E
			TRN		720N		720N
80.	X221	TRAFFIC SIGNAL MODERNIZATION AT VARIOUS LOCATIONS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF EXISTING TRAFFIC CONTROLLERS, CABLES AND CONDUITS, PULLBOXES AND TRAFFIC SIGNAL APPURTENANCES WITH THE LATEST STATE OF THE ART EQUIPMENT AND MATERIALS TO PROVIDE INTERCONNECTION OF SIGNALIZED INTERSECTIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			300		
		CONSTRUCTION			1,500		1,500
		TOTAL FUNDING	TRN		600E		300E
			TRN		1,200N		1,200N
81.	X222	SEISMIC RETROFIT OF VARIOUS BRIDGES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR SEISMIC RETROFIT OF VARIOUS BRIDGES ON OAHU AND HAWAII. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			5,000		5,000
		CONSTRUCTION					50,000
		TOTAL FUNDING	TRN		1,000E		11,000E
			TRN		4,000N		44,000N
82.		HIGHWAYS DIVISION CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HIGHWAYS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM RELATED POSITIONS.					
		PLANS			18,998		18,998
		DESIGN			1		1
		CONSTRUCTION			1		1
		TOTAL FUNDING	TRN		6,000B		6,000B
			TRN		13,000E		13,000E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
83.	X102	ISTEA MANAGEMENT SYSTEMS, STATEWIDE					
		PLANS AND EQUIPMENT FOR IMPLEMENTATION OF SEVEN MANAGEMENT SYSTEMS FOR TRANSPORTATION MANAGEMENT AND TO DEVELOP APPROPRIATE INFORMATION SYSTEMS TO GENERATE THE DATA NECESSARY FOR THESE MANAGEMENT SYSTEMS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			200		
		EQUIPMENT			1,250		
		TOTAL FUNDING	TRN		290E		E
			TRN		1,160N		N
84.		ALA WAI CANAL DREDGING, WATER QUALITY, AND OTHER IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE DREDGING; WATER QUALITY; AND OTHER IMPROVEMENTS TO THE ALA WAI CANAL. STATE MATCH TO BE PROVIDED IN CONJUNCTION WITH FUNDS FROM THE CITY AND COUNTY OF HONOLULU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			100		
		DESIGN			800		
		CONSTRUCTION			6,800		
		TOTAL FUNDING	TRN		500C		C
			TRN		6,700N		N
			TRN		500S		S
85.		POKAI BAY BEACH AND BREAKWATER IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO POKAI BAY BEACH TO INCLUDE BREAKWATER IMPROVEMENTS AND WATER CIRCULATION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			1		
		DESIGN			79		
		CONSTRUCTION			220		
		TOTAL FUNDING	TRN		60C		C
			TRN		240N		N
85A.		WAIKIKI PEDESTRIAN AND BIKEWAY IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE SEA WALL TO IMPROVE THE SAFETY AND ACCESSIBILITY OF THE BIKEWAY AND PEDESTRIAN WALKWAY ADJACENT TO THE WAIKIKI AQUARIUM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN					56
		CONSTRUCTION					245
		TOTAL FUNDING	TRN		C		67C
			TRN		N		269N
85B.		KALANIANA'OLE HIGHWAY BEAUTIFICATION, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR HIGHWAY LANDSCAPING ALONG KALANIANA'OLE HIGHWAY.					
		PLANS					1
		LAND					16,000
		DESIGN					100
		CONSTRUCTION					4,299
		TOTAL FUNDING	TRN		C		3,400C
			TRN		N		17,000N

## D. ENVIRONMENTAL PROTECTION

## HTH840 - ENVIRONMENTAL MANAGEMENT

1. 840001 WASTEWATER TREATMENT REVOLVING FUND FOR POLLUTION CONTROL, STATEWIDE

CONSTRUCTION FOR FUNDS TO MATCH FEDERAL CAPITALIZATION GRANTS FOR WASTEWATER PROJECTS. FUNDS APPROPRIATED TO BE TRANSFERRED TO WATER POLLUTION CONTROL REVOLVING FUND ESTABLISHED PURSUANT TO CHAPTER 342-D, HRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION		14,683	
TOTAL FUNDING	HTH	2,447C	C
	HTH	12,236N	N

## LNR402 - FORESTS AND WILDLIFE RESOURCES

2. D09 HAWAII BRANCH, DOFAW HILO OFFICE COMPLEX, HAWAII

CONSTRUCTION AND EQUIPMENT FOR AN OFFICE COMPLEX BUILDING AND APPURTENANT FACILITIES TO MEET THE HAWAII BRANCH'S OFFICE SPACE AND PUBLIC SERVICES FACILITY REQUIREMENTS.

CONSTRUCTION		2,421	
EQUIPMENT			48
TOTAL FUNDING	LNR	2,421C	48C

3. KAHULUI BASEYARD UNDERGROUND FUEL STORAGE TANKS, MAUI

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REPLACEMENT/UPGRADE OF FUEL STORAGE TANKS AND RELATED CLEANUP. PROJECT TO INCLUDE ALTERATIONS AND MODIFICATIONS FOR THE KAHULUI BASEYARD WAREHOUSE ROOF.

PLANS		1	
DESIGN		57	

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		CONSTRUCTION EQUIPMENT			516		
		TOTAL FUNDING	LNR		1	575C	C
<b>LNR404 - WATER RESOURCES</b>							
4.	G55B	KALAOA MONITOR WELL, HAWAII					
		PLANS, LAND ACQUISITION, AND DESIGN FOR A MONITOR WELL TO COLLECT HYDROLOGIC AND GEOLOGIC INFORMATION AND TO OBSERVE AQUIFER PERFORMANCE.					
		PLANS			10		
		LAND			10		
		DESIGN			38		
		TOTAL FUNDING	LNR		58C		C
5.	G55C	KAHALUU MONITOR WELL, HAWAII					
		PLANS, LAND ACQUISITION, AND DESIGN FOR A MONITOR WELL TO COLLECT HYDROLOGIC AND GEOLOGIC INFORMATION AND TO OBSERVE AQUIFER PERFORMANCE.					
		PLANS			10		
		LAND			10		
		DESIGN			38		
		TOTAL FUNDING	LNR		58C		C
6.	G55D	LAHAINA MONITOR WELL, MAUI					
		PLANS, LAND ACQUISITION, AND DESIGN FOR A MONITOR WELL TO COLLECT HYDROLOGIC AND GEOLOGIC INFORMATION AND TO OBSERVE AQUIFER PERFORMANCE.					
		PLANS			10		
		LAND			10		
		DESIGN			38		
		TOTAL FUNDING	LNR		58C		C
7.	G55F	MONITOR AND EXPLORATORY WELLS, OAHU					
		PLANS, LAND ACQUISITION, AND DESIGN FOR MONITOR OR EXPLORATORY WELLS TO COLLECT HYDROLOGIC AND GEOLOGIC INFORMATION AND TO OBSERVE AQUIFER PERFORMANCE. PROJECT WILL ENTAIL FEDERAL AND COUNTY COST SHARING.					
		PLANS			10		
		LAND			10		
		DESIGN			38		
		TOTAL FUNDING	LNR		58C		C

**LNR906 - LNR-NATURAL PHYSICAL ENVIRONMENT**

8. CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
PLANS, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF LAND AND NATURAL RESOURCES. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM RELATED POSITIONS.							
		PLANS		1,498		1,498	
		DESIGN		1		1	
		CONSTRUCTION		1		1	
		TOTAL FUNDING	LNR	1,500C		1,500C	

## E. HEALTH

## HTH101 - TUBERCULOSIS/HANSEN'S DISEASE CONTROL

1. 101501 LANAKILA HEALTH CENTER, AIR CONDITIONING IMPROVEMENTS AND RENOVATIONS, OAHU

DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE EXISTING AIR CONDITIONING SYSTEM TO MEET CODE REQUIREMENTS AND RENOVATION OF INTERIOR SPACES TO CREATE POSITIVE/NEGATIVE AIR PRESSURE AS REQUIRED BY CODE. PROJECT TO INCLUDE THE REMOVAL OF ASBESTOS IN PIPE LAGGING.

DESIGN		71	
CONSTRUCTION		721	
TOTAL FUNDING	AGS	792C	C

## HTH214 - KOHALA HOSPITAL

2. 214001 KOHALA HOSPITAL, WASTEWATER TREATMENT PLANT, HAWAII

LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE INSTALLATION OF A WASTEWATER TREATMENT SYSTEM TO REPLACE DUAL CESSPOOL SYSTEM FOR 10,000 GALLONS PER DAY DISCHARGE.

LAND		1	
DESIGN		1	
CONSTRUCTION		269	
TOTAL FUNDING	AGS	271C	C

## HTH215 - KONA HOSPITAL

3. 215601 KONA COMMUNITY HOSPITAL, RENOVATION AND EXPANSION, PHASE II, HAWAII

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND EXPANSION OF THE EXISTING FACILITY.

DESIGN		453	
CONSTRUCTION		8,914	
EQUIPMENT		1	
TOTAL FUNDING	AGS	4,000B	B
	AGS	5,368C	C

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
HTH221 - MAUI MEMORIAL HOSPITAL							
4.	221001	MAUI MEMORIAL HOSPITAL RENOVATION AND EXPANSION, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR SECOND INCREMENT/RENOVATION OF MAUI MEMORIAL HOSPITAL.					
		DESIGN		229			
		CONSTRUCTION		4,212			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	4,442C			C
4A.		MAUI MEMORIAL HOSPITAL, DIETARY AND KITCHEN RENOVATION/EXPANSION, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND EXPANSION OF THE DIETARY AND KITCHEN FACILITIES AND OTHER RELATED WORK AT MAUI MEMORIAL HOSPITAL.					
		DESIGN					1
		CONSTRUCTION					1,989
		EQUIPMENT					1
		TOTAL FUNDING	AGS		C		1,991C
4B.		MAUI MEMORIAL HOSPITAL, PARKING STRUCTURE, MAUI					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A PARKING STRUCTURE FOR APPROXIMATELY 450 CARS AT MAUI MEMORIAL HOSPITAL. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.					
		PLANS					1
		DESIGN					500
		CONSTRUCTION					8,498
		EQUIPMENT					1
		TOTAL FUNDING	HTH		E		9,000E
HTH222 - HANA MEDICAL CENTER							
5.	222601	HANA MEDICAL CENTER RENOVATION, MAUI					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF HANA MEDICAL CENTER. PROJECT TO CORRECT EXISTING DEFICIENCIES.					
		PLANS		1			
		DESIGN		49			
		CONSTRUCTION		399			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	450C			C
HTH231 - KAUAI VETERANS MEMORIAL HOSPITAL							
6.		KAUAI VETERANS MEMORIAL HOSPITAL, RENAL DIALYSIS UNIT, KAUAI					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN AND CONSTRUCTION FOR A RENAL DIALYSIS UNIT AT KAUAI VETERANS MEMORIAL HOSPITAL.					
		DESIGN			25		
		CONSTRUCTION			358		
		TOTAL FUNDING	AGS		383C		C
6A.		KAUAI VETERANS MEMORIAL HOSPITAL, MEDICAL OFFICE BUILDING, KAUAI					
		DESIGN AND EQUIPMENT FOR FURNITURE AND RELATED EQUIPMENT FOR THE MEDICAL OFFICE BUILDING.					
		DESIGN					1
		EQUIPMENT					299
		TOTAL FUNDING	AGS		C		300C
SUB601 - PRIVATE HOSPITALS & MEDICAL SERVICES							
7.		KAHUKU HOSPITAL, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND/OR EXPANSION OF THE KAHUKU HOSPITAL TO PROVIDE FOR A LONG TERM CARE UNIT. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42D, HRS.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			1,497		
		EQUIPMENT			1		
		TOTAL FUNDING	HTH		1,500C		C
8.		WILCOX MEMORIAL HOSPITAL, KAUAI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION, EXPANSION, AND/OR ADDITION TO THE WILCOX MEMORIAL HOSPITAL AND RELATED FACILITIES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42D, HRS.					
		DESIGN			200		
		CONSTRUCTION			1,799		
		EQUIPMENT			1		
		TOTAL FUNDING	HTH		2,000C		C
HTH501 - DEVELOPMENTAL DISABILITIES							
9.	501004	HALE HAUOLI DAY CARE FACILITIES FOR THE MENTALLY RETARDED, KAUAI					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR DAY CARE FACILITIES FOR THE MENTALLY RETARDED.					
		PLANS			1		
		DESIGN			519		
		CONSTRUCTION				5,571	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS		520C		5,572C



## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
HTH907 - GENERAL ADMINISTRATION							
10.	907501	KAPAHULU HEALTH CENTER, OAHU					
		DESIGN AND CONSTRUCTION FOR THE DEMOLITION OF EXISTING FACILITIES AND GROUND AND SITE IMPROVEMENTS.					
		DESIGN			16		
		CONSTRUCTION			74		
		TOTAL FUNDING	AGS		90C		C
10A.	907501	STATEWIDE CORRECTIONS TO ACCOMMODATE THE HANDICAPPED IN DOH FACILITIES, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MODIFICATIONS FOR THE HANDICAPPED TO CORRECT EXISTING ARCHITECTURAL BARRIERS AT DEPARTMENT OF HEALTH FACILITIES.					
		DESIGN					199
		CONSTRUCTION					300
		EQUIPMENT					1
		TOTAL FUNDING	AGS		C		500C

**F. SOCIAL SERVICES****HMS501 - YOUTH SERVICES ADMINISTRATION**

1. OYS1 HAWAII YOUTH CORRECTIONAL FACILITY COMPLEX, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR THE DEMOLITION OF EXISTING STAFF HOUSE AND FILL CESSPOOL IN BACK OF HOUSE.

PLANS		1		
DESIGN		1		
CONSTRUCTION		38		
TOTAL FUNDING	HMS	40C		C

**DEF112 - SERVICES TO VETERANS**

2. OVS931 VETERANS' CEMETERIES UPGRADE AND DEVELOPMENT, STATEWIDE

PLANS, DESIGN, AND CONSTRUCTION FOR THE UPGRADE AND DEVELOPMENT OF VETERANS' CEMETERIES AT VARIOUS NEIGHBOR ISLAND SITES INCLUDING KAUAI, MAUI, MOLOKAI, LANAI, HILO, AND WEST HAWAII. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS		1		
DESIGN		379		
CONSTRUCTION		2,280		1,800
TOTAL FUNDING	DEF	1,190C		500C
	DEF	1,330N		1,300N
	DEF	140S		S

3. OVS932 STATE HOMES FOR VETERANS ON MAUI, HAWAII, KAUAI, AND MOLOKAI, STATEWIDE

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		PLANS AND DESIGN FOR THE DEVELOPMENT OF FACILITIES FOR VETERANS DISABLED BY AGE, DISEASE, OR OTHERWISE WHO BY REASON OF SUCH DISABILITY ARE INCAPABLE OF EARNING A LIVING. ALSO, THIS PROJECT MAY INCLUDE THE FURNISHING OF NURSING CARE FOR SUCH VETERANS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		600			
		DESIGN		300			
		TOTAL FUNDING	DEF	300C			C
			DEF	600N			N
4.	P94027	HAWAII VETERANS' CENTER, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A HAWAII VETERANS' CENTER TO BE EXPENDED BY THE OAHU VETERANS COUNCIL. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42D, HRS.					
		DESIGN		500			
		CONSTRUCTION		2,299			
		EQUIPMENT		1			
		TOTAL FUNDING	DEF	2,800C			C
HMS229 - HOUSING ASSISTANCE ADMINISTRATION							
5.	HA1073	KAMEHAMEHA HOMES, OAHU					
		DESIGN AND CONSTRUCTION FOR THE DEMOLITION AND SITE PREPARATION OF KAMEHAMEHA HOMES TO MAKE WAY FOR A NEW HOUSING DEVELOPMENT.					
		DESIGN		629			
		CONSTRUCTION		1,911			
		TOTAL FUNDING	HMS	2,540N			N
6.	HA1704	LANAKILA HOMES, HAWAII					
		CONSTRUCTION FOR SITE AND BUILDING IMPROVEMENTS FOR THE LANAKILA HOMES TO MEET CURRENT CODES AND STANDARDS.					
		CONSTRUCTION		3,263			
		TOTAL FUNDING	HMS	3,263N			N
7.	HA1705	WAIMANALO HOMES, OAHU					
		CONSTRUCTION FOR SITE AND BUILDING IMPROVEMENTS AT THE WAIMANALO HOMES TO MEET CURRENT CODES AND STANDARDS.					
		CONSTRUCTION		801			
		TOTAL FUNDING	HMS	801N			N
8.	HA1706	PUNAHELE BUILDING IMPROVEMENTS, HAWAII					
		CONSTRUCTION FOR BUILDING AND SITE IMPROVEMENTS AT PUNAHELE TO MEET CURRENT CODES AND STANDARDS.					
		CONSTRUCTION		519			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		TOTAL FUNDING	HMS	519N			N
9.		PUUWAI MOMI BUILDING IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR BUILDING AND SITE IMPROVEMENTS TO RENOVATE PUUWAI MOMI TO CURRENT CODES AND STANDARDS.					
		CONSTRUCTION		5,147			
		TOTAL FUNDING	HMS	5,147N			N
10.		KOOLAU VILLAGE BUILDING IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR VARIOUS SITE AND BUILDING IMPROVEMENTS TO RENOVATE KOOLAU VILLAGE TO CURRENT CODES AND STANDARDS.					
		CONSTRUCTION		525			
		TOTAL FUNDING	HMS	525N			N
10A.	HA7061	KUHIO PARK TERRACE, OAHU					
		DESIGN AND CONSTRUCTION FOR VARIOUS IMPROVEMENTS TO RENOVATE KUHIO PARK TERRACE TO CURRENT CODES AND STANDARDS.					
		DESIGN				325	
		CONSTRUCTION				3,249	
		TOTAL FUNDING	HMS		N	3,574N	
10B.	HA7062	HUD LOW INCOME PUBLIC HOUSING AT WAIKOLOA AND HILO, HAWAII					
		CONSTRUCTION FOR TWENTY THREE-BEDROOM, ONE-BATH TOWNHOUSE UNITS AT WAIKOLOA AND HILO.					
		CONSTRUCTION				1,000	
		TOTAL FUNDING	HMS		N	1,000N	
10C.	HA7063	LANAKILA HOMES II, HAWAII					
		DESIGN AND CONSTRUCTION FOR VARIOUS SITE AND BUILDING IMPROVEMENTS TO BRING LANAKILA HOMES II TO CURRENT CODES AND STANDARDS.					
		DESIGN				259	
		CONSTRUCTION				2,592	
		TOTAL FUNDING	HMS		N	2,851N	
10D.		KUHIO PARK TERRACE, MULTI-PURPOSE COMMUNITY FACILITY, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE RENOVATION OF A MULTI-PURPOSE COMMUNITY FACILITY LOCATED AT KUHIO PARK TERRACE. PROJECT TO INCLUDE ASBESTOS REMOVAL AND THE UPGRADE OF THE FACILITY TO MEET HEALTH AND SAFETY STANDARDS.					
		PLANS				1	
		DESIGN				19	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		CONSTRUCTION					265
		TOTAL FUNDING	HMS		C		220C
			HMS		R		65R

BUF225 - PRIVATE HOUSING DEVELOPMENT & OWNERSHIP

11. HF9402 ELDERLY HOUSING AT CROWN PROPERTY, PHASE III, OAHU

LAND ACQUISITION AND DESIGN FOR AN ELDERLY HOUSING COMPLEX, A COMMUNITY ROOM, PARKING STALLS, AND OTHER ANCILLARY FACILITIES.

LAND			1,400	
DESIGN			500	
TOTAL FUNDING	BUF		1,900C	C

11A. WATER SOURCES FOR THE HOUSING FINANCE AND DEVELOPMENT CORPORATION, OAHU

CONSTRUCTION FOR THE PURCHASE OF WATER SOURCE SUPPLY FROM THE CITY AND COUNTY OF HONOLULU BOARD OF WATER SUPPLY.

CONSTRUCTION				363
TOTAL FUNDING	BUF		W	363W

HMS224 - HOMELESS SERVICES

11B. HM9701 WEINBERG VILLAGE, WAIANAE, OAHU

CONSTRUCTION FOR THE DEMOLITION AND/OR RELOCATION OF EXISTING UNITS AND TO RESTORE THE SITE BACK TO ITS ORIGINAL CONDITION.

CONSTRUCTION				565
TOTAL FUNDING	HMS		C	565C

11C. HM9702 WEINBERG VILLAGE, HALEIWA, OAHU

CONSTRUCTION FOR THE DEMOLITION AND/OR RELOCATION OF EXISTING UNITS AND TO RESTORE THE SITE BACK TO ITS ORIGINAL CONDITION.

CONSTRUCTION				400
TOTAL FUNDING	HMS		C	400C

HHL602 - PLANNG, DEV, MGT & GEN SPPT FOR HAWN HMSTDS

12. LMD004 ANAHOLA UNDERGROUND FUEL TANK REMOVAL, KAUAI

DESIGN AND CONSTRUCTION FOR THE REMOVAL OF FUEL STORAGE TANKS. PROJECT TO INCLUDE TESTING, REMOVAL AND DISPOSAL, AND REMEDIATION.

DESIGN			2	
CONSTRUCTION			98	
TOTAL FUNDING	HHL		100C	C

13. LMD003 ANAHOLA DRAINAGE DITCHES, KAUAI

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
DESIGN AND CONSTRUCTION FOR DRAINAGE DITCHES TO INCLUDE THE REMOVAL OF SILT AND OVERGROWTH AND THE INSTALLATION OF A CONCRETE CHANNEL.							
		DESIGN			10		
		CONSTRUCTION			150		
		TOTAL FUNDING	HHL		160C		C

## G. FORMAL EDUCATION

## EDN100 - SCHOOL BASED BUDGETING

1. 005 LUMP SUM CIP-ARCHITECTURAL BARRIERS AND SPECIAL EDUCATION CLASSROOMS, STATEWIDE

DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TO HANDICAPPED PERSONS.

DESIGN		300	300
CONSTRUCTION		3,700	3,510
TOTAL FUNDING	AGS	4,000B	3,810B

2. 010 LUMP SUM CIP-ASBESTOS AND/OR LEAD PAINT REMOVAL IN SCHOOL BUILDINGS, STATEWIDE

DESIGN AND CONSTRUCTION FOR THE CORRECTION, IMPROVEMENT, AND RENOVATION TO ALL EXISTING SCHOOL BUILDINGS, STATEWIDE. PROJECT TO INCLUDE THE REMOVAL OF ASBESTOS AND LEAD PAINT.

DESIGN		50	50
CONSTRUCTION		450	450
TOTAL FUNDING	AGS	500B	500B

3. LUMP SUM CIP-CAPITAL IMPROVEMENTS PROGRAM COSTS, STATEWIDE

PLANS, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF EDUCATION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM RELATED POSITIONS.

PLANS		148	148
DESIGN		1	1
CONSTRUCTION		1	1
TOTAL FUNDING	EDN	150B	150B

4. 008 LUMP SUM CIP-FIRE PROTECTION, CODE VIOLATIONS, AND ALARM SYSTEMS, STATEWIDE

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN AND CONSTRUCTION FOR FIRE PROTECTION SYSTEMS AND/OR CORRECTIVE MEASURES TO ADDRESS FIRE CODE VIOLATIONS TO MEET COUNTY FIRE PROTECTION STANDARDS AND/OR FIRE CODE VIOLATIONS.					
		DESIGN			100		100
		CONSTRUCTION			650		650
		TOTAL FUNDING	AGS		750B		750B
5. 003		LUMP SUM CIP-MASTER PLANS, SITE STUDIES AND MINOR LAND ACQUISITIONS, STATEWIDE					
		PLANS AND LAND ACQUISITION FOR MASTER PLANNING, SITE SELECTION, PRE-LAND ACQUISITION STUDIES, ACQUISITION OF SMALL PARCELS, FEASIBILITY STUDIES TO MEET FUTURE AND UNFORESEEN NEEDS AND CIP ASSISTANCE FROM DAGS IN PROVIDING COST ESTIMATES FOR BUDGETING AND EXPENDITURE PLANNING.					
		PLANS			745		750
		LAND			5		
		TOTAL FUNDING	AGS		750B		750B
6. 002		LUMP SUM CIP-MINOR RENOVATIONS TO BUILDINGS AND SCHOOL SITES, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MINOR ADDITIONS, RENOVATIONS, AND IMPROVEMENTS TO BUILDINGS AND SCHOOL SITES.					
		DESIGN			150		150
		CONSTRUCTION			1,600		1,600
		EQUIPMENT			100		100
		TOTAL FUNDING	AGS		1,850B		1,850B
7. 011		LUMP SUM CIP-PROJECT ADJUSTMENT FUND, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT. OTHER DEPARTMENT OF EDUCATION PROJECTS WITHIN THIS ACT WITH UNREQUIRED BALANCES MAY BE TRANSFERRED INTO THIS PROJECT.					
		DESIGN			200		200
		CONSTRUCTION			1,750		1,750
		EQUIPMENT			50		50
		TOTAL FUNDING	AGS		2,000B		2,000B
8. 001		LUMP SUM CIP-RELOCATION OR CONSTRUCTION OF TEMPORARY FACILITIES, STATEWIDE					

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RELOCATION OR CONSTRUCTION OF TEMPORARY FACILITIES EACH SCHOOL YEAR TO MEET ENROLLMENT SHIFTS AMONG SCHOOLS, PROGRAM DEMANDS, UNFORESEEN EMERGENCIES, AND TO PROVIDE TEMPORARY FACILITIES AND/OR TRAILER PORTABLES WHILE SCHOOLS ARE BEING PLANNED AND/OR UNDER CONSTRUCTION/REPAIR.					
		DESIGN		250		250	
		CONSTRUCTION		4,500		4,500	
		EQUIPMENT		250		250	
		TOTAL FUNDING	AGS	5,000B		5,000B	
9.	009	LUMP SUM CIP-RENOVATIONS FOR NOISE ABATEMENT, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR CORRECTIVE MEASURES TO SCHOOLS AFFECTED BY EXCESSIVE NOISE AND VENTILATION PROBLEMS.					
		DESIGN		50		50	
		CONSTRUCTION		450		450	
		TOTAL FUNDING	AGS	500B		500B	
10.	014	LUMP SUM CIP-REQUIREMENTS FOR HEALTH AND SAFETY/LAWS AND ORDINANCES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO SCHOOL FACILITIES AND GROUNDS TO MEET HEALTH, SAFETY REQUIREMENTS/LAWS AND ORDINANCES.					
		DESIGN		50		50	
		CONSTRUCTION		450		450	
		TOTAL FUNDING	AGS	500B		500B	
11.	013	LUMP SUM CIP-SPECIAL EDUCATION CLASSROOMS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND/OR CONSTRUCTION OF CLASSROOMS FOR SPECIAL EDUCATION.					
		DESIGN		25			
		CONSTRUCTION		220			
		EQUIPMENT		5			
		TOTAL FUNDING	AGS	250B			B
11A.	015	LUMP SUM CIP-STATE/DISTRICT RELOCATIONS AND IMPROVEMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR STATE AND DISTRICT OFFICE IMPROVEMENTS.					
		DESIGN					24
		CONSTRUCTION					50
		EQUIPMENT					1
		TOTAL FUNDING	AGS		B		75B
12.	012	LUMP SUM CIP-TELECOMMUNICATIONS & POWER INFRASTRUCTURE IMPROVEMENTS, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS.					
		DESIGN			50		250
		CONSTRUCTION			400		1,200
		EQUIPMENT			50		50
		TOTAL FUNDING	AGS		500B		1,500B
12A.		LUMP SUM CIP-WATER SOURCES FOR THE DEPARTMENT OF EDUCATION, OAHU					
		CONSTRUCTION FOR THE PURCHASE OF WATER SOURCE SUPPLY FROM THE CITY AND COUNTY OF HONOLULU BOARD OF WATER SUPPLY.					
		CONSTRUCTION					190
		TOTAL FUNDING	EDN		B		190B
13.	402004	CASTLE HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			225		
		CONSTRUCTION					3,020
		EQUIPMENT					80
		TOTAL FUNDING	AGS		225C		3,100C
14.	343006	EWA GENTRY ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR THE FIRST AND SECOND INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			4,525		
		EQUIPMENT			125		
		TOTAL FUNDING	AGS		4,650B		B
15.	508001	HOOKENA ELEMENTARY SCHOOL, HAWAII					
		CONSTRUCTION AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			5,970		
		EQUIPMENT			30		
		TOTAL FUNDING	AGS		6,000B		B
15A.	406001	KAAAWA ELEMENTARY SCHOOL, OAHU					
		PLANS AND LAND ACQUISITION FOR SITE SELECTION AND LAND ACQUISITION.					
		PLANS					25
		LAND					50
		TOTAL FUNDING	AGS		B		75B
16.	625001	SAMUEL ENOKA KALAMA INTERMEDIATE SCHOOL, MAUI					



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN FOR A NEW LIBRARY FACILITY; RENOVATE TEMPORARY LIBRARY FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		215			
		TOTAL FUNDING	AGS	20B			B
			AGS	195C			C
17.	332005	KALEIOPUU ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR ADMINISTRATION/LIBRARY BUILDING(S) AND RENOVATION OF TEMPORARY ADMINISTRATION AND LIBRARY SPACES INTO CLASSROOMS. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		3,200			
		EQUIPMENT		50			
		TOTAL FUNDING	AGS	3,250B			B
18.	342006	KAMAILE ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR NEW ADMINISTRATION/LIBRARY BUILDINGS; RENOVATION OF TEMPORARY ADMINISTRATION AND LIBRARY SPACES FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		3,200			
		EQUIPMENT		50			
		TOTAL FUNDING	AGS	3,250C			C
19.	340009	KANOELANI ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR ADMINISTRATION/LIBRARY BUILDING(S) AND RENOVATION OF TEMPORARY ADMINISTRATION AND LIBRARY SPACES INTO CLASSROOMS. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		3,200			
		EQUIPMENT		50			
		TOTAL FUNDING	AGS	3,250B			B
19A.		KAPAA ELEMENTARY SCHOOL, KAUAI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				85	
		CONSTRUCTION				893	
		EQUIPMENT				22	
		TOTAL FUNDING	AGS		B		1,000B
19B.		KAPAA ELEMENTARY SCHOOL, KAUAI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					100
		CONSTRUCTION					1,149
		EQUIPMENT					101
		TOTAL FUNDING	AGS		B		1,350B
19C.		KAPAA ELEMENTARY SCHOOL, KAUAI					
		EQUIPMENT FOR THE MULTI-PURPOSE/DINING FACILITY AND OTHER RELATED APPURTENANCES.					
		EQUIPMENT					75
		TOTAL FUNDING	AGS		B		75B
19D.		KAPAA II ELEMENTARY SCHOOL, KAUAI					
		PLANS, LAND ACQUISITION, AND DESIGN FOR FIRST INCREMENT OF NEW SCHOOL TO INCLUDE CLASSROOMS, SITE GRADING, ON/OFF SITE INFRASTRUCTURE, SUPPORT FACILITIES, PLAYFIELD AND PLAYCOURTS, GROUND AND SITE IMPROVEMENTS.					
		PLANS					1
		LAND					783
		DESIGN					1
		TOTAL FUNDING	AGS		B		785B
20.	717002	KAPAA INTERMEDIATE SCHOOL (NEW), KAUAI					
		CONSTRUCTION AND EQUIPMENT FOR THE FIRST INCREMENT OF THE NEW SCHOOL. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		19,850			12,000
		EQUIPMENT		150			
		TOTAL FUNDING	AGS	20,000B			12,000B
21.	347003	KAPOLEI ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR THE THIRD INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES; RENOVATION OF TEMPORARY DINING ROOM INTO CLASSROOMS.					
		CONSTRUCTION		4,125			
		EQUIPMENT		100			
		TOTAL FUNDING	AGS	4,225B			B
22.	347005	KAPOLEI ELEMENTARY SCHOOL, OAHU					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE FOURTH INCREMENT; RENOVATION OF TEMPORARY FACILITIES INTO CLASSROOMS; TEACHER STATIONS AND STORAGE FOR YEAR ROUND, MULTI-TRACK SCHEDULE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		225			
		CONSTRUCTION				3,800	
		EQUIPMENT				300	
		TOTAL FUNDING	AGS	225B		4,100B	
22A.		KAPOLEI INTERMEDIATE SCHOOL, OAHU					
		PLANS AND DESIGN FOR THE FIRST INCREMENT OF THE SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS				50	
		DESIGN				900	
		TOTAL FUNDING	AGS		B	950B	
23.	718002	KAUAI INTERMEDIATE SCHOOL (NEW), KAUAI					
		PLANS, LAND ACQUISITION, AND DESIGN FOR THE FIRST INCREMENT OF THE NEW SCHOOL. PROJECT TO INCLUDE CLASSROOMS, SUPPORT FACILITIES, ON/OFF SITE INFRASTRUCTURE, PARKING, PLAYCOURTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS				15	
		LAND				5	
		DESIGN				1,800	
		TOTAL FUNDING	AGS		B	1,820B	
24.	538003	KEAAU HIGH SCHOOL, HAWAII					
		PLANS, LAND ACQUISITION, AND DESIGN FOR FIRST INCREMENT; CLASSROOMS, COVERED WALKWAYS, SUPPORT FACILITIES, PLAYFIELDS AND PLAYCOURTS, TEACHER STATIONS AND STORAGE, ON/OFF SITE INFRASTRUCTURE, PARKING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS			5		
		LAND		2,250			
		DESIGN		1,500			
		TOTAL FUNDING	AGS	3,755B			B
25.	537003	KEAAU II ELEMENTARY SCHOOL, HAWAII					
		LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE FIRST INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		LAND				5	
		DESIGN		725			
		CONSTRUCTION				12,000	
		EQUIPMENT				345	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		TOTAL FUNDING	AGS	725B		12,350B	
26.	536002	KEALAKEHE HIGH SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR SECOND INCREMENT; EQUIPMENT AND APPURTENANCES; GROUND AND SITE IMPROVEMENTS.					
		DESIGN		975			
		CONSTRUCTION				15,350	
		EQUIPMENT				150	
		TOTAL FUNDING	AGS	975B		15,500B	
27.	534006	KEONEPOKO ELEMENTARY SCHOOL, HAWAII					
		CONSTRUCTION AND EQUIPMENT FOR A CAFETERIA WITH PREPARATION KITCHEN; RENOVATION OF TEMPORARY DINING FACILITY TO CLASSROOMS; COVERED WALKWAYS; PARKING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		2,275			
		EQUIPMENT		75			
		TOTAL FUNDING	AGS	2,350C			C
28.	630002	KIHEI II ELEMENTARY SCHOOL, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR FIRST INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		5,224			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	4,725B			B
			AGS	500C			C
29.	628005	KING KEKAULIKE HIGH SCHOOL, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR THE THIRD INCREMENT OF SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		12,175			
		EQUIPMENT		75			
		TOTAL FUNDING	AGS	12,250B			B
30.	628008	KING KEKAULIKE HIGH SCHOOL, MAUI					
		DESIGN FOR FOURTH INCREMENT OF SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				1,700	
		TOTAL FUNDING	AGS		B	1,700B	
31.	611001	KULA ELEMENTARY SCHOOL, MAUI					
		DESIGN FOR A SIX CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		175			

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		TOTAL FUNDING	AGS		175C		C
32.	624009	LAHAINA INTERMEDIATE SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A PHYSICAL EDUCATION LOCKER/SHOWER FACILITY AND PLAYFIELD; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			225		
		CONSTRUCTION				2,340	
		EQUIPMENT				10	
		TOTAL FUNDING	AGS	225C		2,350C	
33.	214001	MAKALAPA ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR AN ADMINISTRATION BUILDING; RENOVATION OF TEMPORARY ADMINISTRATION OFFICES INTO CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			225		
		TOTAL FUNDING	AGS	225C			C
34.	626008	MAUI WAENA INTERMEDIATE SCHOOL, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR A SIX CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION				2,300	
		EQUIPMENT				50	
		TOTAL FUNDING	AGS		C	2,350C	
35.	215009	MILILANI HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A FOUR CLASSROOM ADDITION; RENOVATE CLASSROOMS IN BUILDING B; EQUIPMENT AND APPURTENANCES.					
		DESIGN			25		
		CONSTRUCTION			2,050		
		EQUIPMENT			50		
		TOTAL FUNDING	AGS		2,125B		B
36.	245002	MILILANI INTERMEDIATE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FIRST INCREMENT. PROJECT MAY INCLUDE CLASSROOMS, TEACHER STATIONS AND STORAGE, ADMINISTRATION, LIBRARY, CAFETORIUM, PLAY COURTS, PHYSICAL EDUCATION LOCKERS AND SHOWERS, CHORUS/ BAND ROOM, PARKING, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES.					
		DESIGN			975		
		CONSTRUCTION				19,874	
		EQUIPMENT				300	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		TOTAL FUNDING	AGS	975B		20,174B	
36A.	520003	MOUNTAIN VIEW ELEMENTARY SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CAFETERIA; RENOVATE EXISTING CAFETERIA INTO CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				1	
		CONSTRUCTION				2,679	
		EQUIPMENT				50	
		TOTAL FUNDING	AGS		C	2,730C	
37.	335006	NANAKULI ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A(N) ADMINISTRATION/LIBRARY BUILDING(S); RENOVATION OF TEMPORARY ADMINISTRATION/LIBRARY FACILITIES INTO CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		225			
		CONSTRUCTION				3,200	
		EQUIPMENT				50	
		TOTAL FUNDING	AGS	225C		3,250C	
37A.		NANAKULI III ELEMENTARY SCHOOL, OAHU					
		PLANS, LAND ACQUISITION, AND DESIGN FOR FIRST INCREMENT OF THE NEW SCHOOL TO INCLUDE CLASSROOMS, SITE GRADING, ON/OFF SITE INFRASTRUCTURE, SUPPORT FACILITIES, PLAYFIELD AND PLAYCOURTS, GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS				1	
		LAND				1,018	
		DESIGN				1	
		TOTAL FUNDING	AGS		B	1,020B	
38.	627005	PRINCESS NAHIENAENA ELEMENTARY SCHOOL, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR A CAFETORIUM; RENOVATION OF TEMPORARY FACILITIES INTO CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION				2,285	
		EQUIPMENT				65	
		TOTAL FUNDING	AGS		C	2,350C	
39.	327002	WAIU ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR NEW ADMINISTRATION/LIBRARY BUILDING(S); RENOVATION OF TEMPORARY FACILITIES INTO CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN		225			
		TOTAL FUNDING	AGS	225C			C
40.	348002	WAIKELE ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR FIRST INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		1,900		8,350	
		EQUIPMENT				175	
		TOTAL FUNDING	AGS	1,900B		8,525B	
41.	539002	WAIKOLOA ELEMENTARY SCHOOL, HAWAII					
		CONSTRUCTION AND EQUIPMENT FOR THE SECOND INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		4,350			
		EQUIPMENT		100			
		TOTAL FUNDING	AGS	4,450B			B
42.	330007	WAIPAHU HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		225			
		CONSTRUCTION				3,125	
		EQUIPMENT				50	
		TOTAL FUNDING	AGS	225B		3,175B	
43.		AIEA HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A MULTI-PURPOSE FACILITY FOR AIEA HIGH SCHOOL.					
		DESIGN		160			
		CONSTRUCTION		1,514			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	1,675C			C
43A.		AIEA HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF THE WEIGHT ROOM INTO A TRAINER FACILITY, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN				13	
		CONSTRUCTION				46	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS		C	60C	
44.		AIKAHI ELEMENTARY SCHOOL, OAHU					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE LIBRARY AND CONSTRUCTION OF AN ADMINISTRATION BUILDING TO INCLUDE SPECIAL EDUCATION ITINERANT ROOM, PCNC, GROUND AND SITE IMPROVEMENTS; RENOVATION OF TEMPORARY ADMINISTRATION FACILITY TO CLASSROOMS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		115			
		CONSTRUCTION		1,684			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	1,800C			C
45.		AINA HAINA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR COVERED WALKWAYS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		10			
		CONSTRUCTION		90			
		TOTAL FUNDING	AGS	100C			C
45A.		AINA HAINA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A CATTLE GATE AT THE REAR ENTRANCE OF THE SCHOOL.					
		DESIGN					1
		CONSTRUCTION					14
		TOTAL FUNDING	AGS		C		15C
45B.		AINA HAINA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A WALKWAY FROM THE BACK ENTRANCE OF THE KINDERGARTEN BUILDING TO THE ADJOINING CEMENT WALKWAY.					
		DESIGN					1
		CONSTRUCTION					12
		TOTAL FUNDING	AGS		C		13C
45C.		AINA HAINA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE ENCLOSURE OF BUILDINGS A AND B LANAI AREAS.					
		DESIGN					1
		CONSTRUCTION					149
		TOTAL FUNDING	AGS		C		150C
45D.		ALIOLANI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					15
		CONSTRUCTION					60



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		TOTAL FUNDING	AGS		C		75C
45E.		ALIIOLANI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR AN IRRIGATION SYSTEM AND LANDSCAPING IMPROVEMENTS.					
		DESIGN					37
		CONSTRUCTION					118
		TOTAL FUNDING	AGS		C		155C
46.		HENRY PERRINE BALDWIN HIGH SCHOOL, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR A GYMNASIUM; GROUND AND SITE IMPROVEMENTS; PARKING; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		5,485			
		EQUIPMENT		15			
		TOTAL FUNDING	AGS	5,500C			C
47.		JAMES CAMPBELL HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF A NEW GYMNASIUM FLOOR.					
		DESIGN		55			
		CONSTRUCTION		399			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	455C			C
48.		GOVERNOR SANFORD B. DOLE INTERMEDIATE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF CLASSROOM(S) IN THE SHOP BUILDING TO CREATE AN INSTRUCTIONAL TECHNOLOGY CENTER FOR WEST HONOLULU SCHOOLS. PROJECT TO INCLUDE APPROPRIATE SPACE FOR CUSTODIAL AREAS.					
		DESIGN		40			
		CONSTRUCTION		149			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	190C			C
49.		GOVERNOR WALLACE RIDER FARRINGTON HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF VOCATIONAL EDUCATION FACILITIES.					
		DESIGN		50			
		CONSTRUCTION		299			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	350C			C
50.		HAHAIONE ELEMENTARY SCHOOL, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF RETRACTABLE WALLS IN BUILDING F; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			5		
		CONSTRUCTION			19		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		25C		C
50A.		HAHAIONE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF A PORTION OF THE LIBRARY FOR A VIDEO PRODUCTION ROOM.					
		DESIGN					20
		CONSTRUCTION					70
		EQUIPMENT					5
		TOTAL FUNDING	AGS		C		95C
50B.		HELEMANO ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A COVERED WALKWAY AND RELATED IMPROVEMENTS.					
		DESIGN					10
		CONSTRUCTION					68
		TOTAL FUNDING	AGS		C		78C
51.		HOKULANI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR AIR CONDITIONING IMPROVEMENTS TO THE SCHOOL LIBRARY; EQUIPMENT AND APPURTENANCES.					
		DESIGN			45		
		CONSTRUCTION			182		
		TOTAL FUNDING	AGS		227C		C
51A.		HOKULANI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS.					
		DESIGN					5
		CONSTRUCTION					16
		TOTAL FUNDING	AGS		C		21C
51B.		ILIAHI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF AIR CONDITIONING IN THE SCHOOL LIBRARY AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					65
		CONSTRUCTION					200
		TOTAL FUNDING	AGS		C		265C
52.		WILLIAM P. JARRETT INTERMEDIATE SCHOOL, OAHU					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS.					
		DESIGN		10			
		CONSTRUCTION		74			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	85C			C
53.		KAEWAI ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS.					
		DESIGN		70			
		CONSTRUCTION		629			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	700C			C
54.		KAILUA HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR GYMNASIUM BLEACHERS AT KAILUA HIGH SCHOOL.					
		DESIGN		60			
		CONSTRUCTION		284			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	345C			C
55.		KAIMUKI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A RESTROOM FACILITY IN THE VICINITY OF THE SCHOOL TRACK; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					22
		CONSTRUCTION					153
		TOTAL FUNDING	AGS		C		175C
55A.		KAIMUKI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR PARKING IMPROVEMENTS, GROUND AND SITE IMPROVEMENTS, AND OTHER RELATED WORK.					
		DESIGN					25
		CONSTRUCTION					190
		TOTAL FUNDING	AGS		C		215C
55B.		KAIMUKI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS AND OTHER RELATED WORK.					
		DESIGN					65
		CONSTRUCTION					450
		TOTAL FUNDING	AGS		C		515C
56.		HENRY J. KAISER HIGH SCHOOL, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN AND CONSTRUCTION FOR RESTROOM FACILITIES IN THE VICINITY OF THE BASEBALL FIELD; GROUND AND SITE IMPROVEMENTS.					
		DESIGN			14		
		CONSTRUCTION			73		
		TOTAL FUNDING	AGS		87C		C
57.		KALANI HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A MULTIPURPOSE CLASSROOM FACILITY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			30		
		CONSTRUCTION			115		
		EQUIPMENT			8		
		TOTAL FUNDING	AGS		153C		C
57A.		KALANI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF AN ELEVATOR AT THE ADMINISTRATION BUILDING TO COMPLY WITH ACCESSIBILITY STANDARDS.					
		DESIGN					63
		CONSTRUCTION					310
		TOTAL FUNDING	AGS		C		373C
58.		KALIHI KAI ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A LIBRARY FACILITY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			3		
		CONSTRUCTION			1		
		EQUIPMENT			101		
		TOTAL FUNDING	AGS		105C		C
59.		KAMILOIKI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF CATTLE GATES AT THE ENTRANCE TO HAWAII KAI DRIVE.					
		DESIGN			5		
		CONSTRUCTION			10		
		TOTAL FUNDING	AGS		15C		C
60.		KAUMANA ELEMENTARY SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A COVERED PLAYCOURT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			60		1
		CONSTRUCTION			539		71
		EQUIPMENT			1		1
		TOTAL FUNDING	AGS		600C		73C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
61.		KOKO HEAD ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE EXPANSION OF SCHOOL PARKING FACILITIES; ROADWAY IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			11		
		CONSTRUCTION			79		
		TOTAL FUNDING	AGS		90C		C
62.		KONAWAENA HIGH AND INTERMEDIATE SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN ALL-WEATHERIZED TRACK; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			140		
		CONSTRUCTION			2,340		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		2,481C		C
62A.		LAHAINALUNA HIGH SCHOOL, MAUI					
		DESIGN FOR A LIBRARY FACILITY; RENOVATION OF EXISTING LIBRARY INTO CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					200
		TOTAL FUNDING	AGS		C		200C
63.		LEILEHUA HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF EXISTING CLASSROOMS TO SCIENCE CLASSROOMS TO MEET THE NEED FOR ADDITIONAL SCIENCE CREDIT REQUIREMENTS.					
		DESIGN			28		
		CONSTRUCTION			260		
		EQUIPMENT			6		
		TOTAL FUNDING	AGS		294C		C
63A.		KING WILLIAM LUNALILO ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A PARKING LOT FOR VISITORS AND STAFF ON THE EWA END OF THE CAMPUS; GROUND AND SITE IMPROVEMENTS; AND OTHER RELATED WORK.					
		DESIGN					29
		CONSTRUCTION					123
		TOTAL FUNDING	AGS		C		152C
63B.		MAEMAE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE EXPANSION OF THE TURN-AROUND AREA FRONTING THE SCHOOL.					
		DESIGN					35

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		CONSTRUCTION					240
		TOTAL FUNDING	AGS		C		275C
63C.		MAEMAE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR SECURITY SCREENS, METAL BARS, AND GATES FOR BUILDING J.					
		DESIGN					20
		CONSTRUCTION					70
		TOTAL FUNDING	AGS		C		90C
63D.		MAUNAWILI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR OUTDOOR LIGHTING IN THE VICINITY OF THE CAFETORIUM AND PARKING LOT.					
		DESIGN					40
		CONSTRUCTION					150
		TOTAL FUNDING	AGS		C		190C
64.		MILILANI HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN ALL-WEATHERIZED TRACK; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			200		
		CONSTRUCTION			799		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		1,000C		C
64A.		MOANALUA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR DRIVEWAY AND PARKING LOT IMPROVEMENTS. PROJECT TO INCLUDE CHAIN LINK FENCE, GROUND AND SITE IMPROVEMENTS, GATES, CURBING, BUS SHELTER, SIDEWALKS, AND OTHER RELATED WORK.					
		DESIGN					55
		CONSTRUCTION					182
		TOTAL FUNDING	AGS		C		237C
65.		MOANALUA HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A MULTI-PURPOSE CENTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			250		
		CONSTRUCTION					3,335
		EQUIPMENT					1
		TOTAL FUNDING	AGS		250C		3,336C
65A.		MOANALUA INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A COURTYARD, GROUND AND SITE IMPROVEMENTS, AND OTHER RELATED WORK.					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN					3
		CONSTRUCTION					12
		TOTAL FUNDING	AGS		C		15C
66.	618002	MOLOKAI HIGH SCHOOL, MOLOKAI					
		DESIGN FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		225			
		TOTAL FUNDING	AGS	225C			C
67.		NIU VALLEY INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR RESTROOM FACILITIES AT THE SCHOOL LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		20			
		CONSTRUCTION		60			
		TOTAL FUNDING	AGS	80C			C
67A.		NIU VALLEY INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR CATTLE GATES AT TWO ENTRANCES ON HALEMAUMAU STREET.					
		DESIGN					6
		CONSTRUCTION					24
		TOTAL FUNDING	AGS		C		30C
67B.		NIU VALLEY INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A FIELD ENCLOSURE VIA STANDARD FOUR FOOT FENCE ALONG KANAU STREET AND HALEMAUMAU STREET.					
		DESIGN					3
		CONSTRUCTION					7
		TOTAL FUNDING	AGS		C		10C
68.		NOELANI ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND/OR EXPANSION OF THE ADMINISTRATION BUILDING TO INCLUDE SPACE FOR THE PCNC, A+, AND OTHER SCHOOL PROGRAMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		50			
		CONSTRUCTION		149			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	200C			C
69.		NUUANU ELEMENTARY SCHOOL, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN AND CONSTRUCTION FOR AIR CONDITIONING IMPROVEMENTS TO THE SCHOOL LIBRARY; EQUIPMENT AND APPURTENANCES.					
		DESIGN			40		
		CONSTRUCTION			130		
		TOTAL FUNDING	AGS		170C		C
69A.		PAUOA ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A LIBRARY AUTOMATION SYSTEM.					
		DESIGN					8
		CONSTRUCTION					1
		EQUIPMENT					6
		TOTAL FUNDING	AGS		C		15C
69B.		PEARL CITY HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF THE EXISTING LIBRARY TO INCLUDE A BROADCAST BOOTH AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					20
		CONSTRUCTION					70
		EQUIPMENT					60
		TOTAL FUNDING	AGS		C		150C
70.		PEARL CITY HIGHLANDS ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR DRIVEWAY AND PARKING IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			10		
		CONSTRUCTION			140		
		TOTAL FUNDING	AGS		150C		C
71.		POHAKEA ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A LIBRARY FACILITY; RENOVATION OF TEMPORARY FACILITY INTO CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			85		40
		CONSTRUCTION			1,082		734
		EQUIPMENT			65		1
		TOTAL FUNDING	AGS		1,232C		775C
72.		PUOHALA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR PERMANENT ROOM PARTITIONS.					
		DESIGN			5		
		CONSTRUCTION			45		
		TOTAL FUNDING	AGS		50C		C
72A.		PRESIDENT THEODORE ROOSEVELT HIGH SCHOOL, OAHU					



## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN FOR IMPROVEMENTS TO THE BOYS AND GIRLS PHYSICAL EDUCATION LOCKER ROOMS.					
		DESIGN					60
		TOTAL FUNDING	AGS		C		60C
72B.	525007	WAIAKEA HIGH SCHOOL, HAWAII					
		CONSTRUCTION AND EQUIPMENT FOR AN ADMINISTRATION BUILDING; RENOVATION OF TEMPORARY ADMINISTRATION OFFICES INTO CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION					3,460
		EQUIPMENT					75
		TOTAL FUNDING	AGS		C		3,535C
73.		WAIAKEA INTERMEDIATE SCHOOL, HAWAII					
		DESIGN AND CONSTRUCTION FOR A COVERED PLAYCOURT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				55	
		CONSTRUCTION				540	
		TOTAL FUNDING	AGS			595C	C
74.	235003	WAIALUA INTERMEDIATE AND HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				1	
		CONSTRUCTION				2,400	
		EQUIPMENT				121	
		TOTAL FUNDING	AGS			2,522C	C
75.		WAIALUA INTERMEDIATE AND HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A SPRINKLER SYSTEM FOR THE BASEBALL FIELD; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				10	
		CONSTRUCTION				90	
		TOTAL FUNDING	AGS			100C	C
76.		WAIHEE ELEMENTARY SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TWO TEMPORARY FACILITIES FOR WAIHEE ELEMENTARY SCHOOL.					
		DESIGN				20	
		CONSTRUCTION				179	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS			200C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
77.		WAILUPE VALLEY ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR AIR CONDITIONING IMPROVEMENTS TO THE SCHOOL LIBRARY; EQUIPMENT AND APPURTENANCES.					
		DESIGN			40		
		CONSTRUCTION			130		
		TOTAL FUNDING	AGS		170C		C
77A.		WAILUPE VALLEY ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE SCHOOL LIBRARY AND FOR A NEW ADMINISTRATIVE OFFICE.					
		DESIGN					100
		CONSTRUCTION					614
		EQUIPMENT					1
		TOTAL FUNDING	AGS			C	715C
78.		WAIPAHU ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR CORRECTIVE MEASURES TO THE EXCESSIVE NOISE AND VENTILLATION PROBLEMS IN AFFECTED CLASSROOMS INCLUDING THE INSTALLATION OF AIR CONDITIONING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			70		
		CONSTRUCTION			330		
		TOTAL FUNDING	AGS		400C		C

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79. 800-12 HEALTH AND SAFETY REQUIREMENTS, STATEWIDE

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR HEALTH, SAFETY, ACCESSIBILITY, AND OTHER CODE REQUIREMENTS. PROJECT MAY INCLUDE THE REMOVAL OF HAZARDOUS MATERIALS, RENOVATIONS FOR LIBRARY PATRONS AND EMPLOYEES, ENVIRONMENTAL CONTROLS, AND OTHER RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.							
		PLANS			58		
		DESIGN			292		70
		CONSTRUCTION			244		1,234
		EQUIPMENT			1		41
		TOTAL FUNDING	AGS		595C		1,141C
			AGS		N		204N

80. 037-1 WAIPAHU PUBLIC LIBRARY, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW LIBRARY FACILITY WITH TEMPERATURE, HUMIDITY, AND ACCOUSTICAL CONTROLS.

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN			1		
		CONSTRUCTION			1		
		EQUIPMENT		277			
		TOTAL FUNDING	AGS	279C			C
81.	109-1	MANOA PUBLIC LIBRARY, OAHU					
		LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE MANOA PUBLIC LIBRARY. PROJECT TO INCLUDE BUT NOT LIMITED TO, TEMPERATURE, HUMIDITY, ACCOUSTICAL CONTROLS, AND RELATED PARKING IMPROVEMENTS.					
		LAND			1		
		DESIGN		497			
		CONSTRUCTION		1			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	500C			C
82.	059-3	KIHEI PUBLIC LIBRARY, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW LIBRARY FACILITY WITH TEMPERATURE, HUMIDITY, AND ACCOUSTICAL CONTROLS.					
		DESIGN			1		
		CONSTRUCTION			1		
		EQUIPMENT		277			
		TOTAL FUNDING	AGS	279C			C
82A.		KOHALA PUBLIC LIBRARY, HAWAII					
		PLANS AND DESIGN FOR A NEW LIBRARY FACILITY WITH TEMPERATURE, HUMIDITY, AND ACCOUSTICAL CONTROLS.					
		PLANS					100
		DESIGN					325
		TOTAL FUNDING	AGS		C		425C
UOH100 - UNIVERSITY OF HAWAII, MANOA							
83.	M71	UHM, UNIVERSITY HOUSE, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE UNIVERSITY HOUSE, A MULTIFUNCTIONAL FACILITY TO BE LOCATED ON THE LAW SCHOOL PARKING LOT.					
		PLANS			1		
		DESIGN		704			
		CONSTRUCTION		6,607			
		EQUIPMENT		1,000			
		TOTAL FUNDING	UOH	8,312R			R
84.	M72	UHM, FOOD SERVICE FACILITY, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE HAMILTON SNACK BAR.					
		DESIGN			1		
		CONSTRUCTION		388			
		EQUIPMENT			1		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		TOTAL FUNDING	UOH	390B			B
85.	050	UHM, SPECIAL EVENTS ARENA AND ATHLETICS SUPPORT FACILITIES, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE SPECIAL EVENTS ARENA AND ATHLETICS SUPPORT FACILITIES. ALSO, FOR THE DEMOLITION OF EXISTING FACILITIES AND RELOCATION AND RENOVATION OF FACILITIES FOR PROGRAMS AFFECTED BY THIS PROJECT.					
		DESIGN		466			
		CONSTRUCTION		5,871			
		EQUIPMENT		414			
		TOTAL FUNDING	AGS	3,375R			R
			AGS	3,376W			W
86.	175	UHM, COCONUT ISLAND MARINE RESEARCH LABORATORY, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE COCONUT ISLAND MARINE RESEARCH LABORATORY.					
		PLANS		322			
		DESIGN		426			
		CONSTRUCTION		6,865			
		EQUIPMENT		1			
		TOTAL FUNDING	UOH	7,614R			R
87.	532	UHM, INSTITUTE FOR ASTRONOMY, UNIVERSITY PARK FACILITY IN HILO, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A HEADQUARTER FACILITY FOR THE INSTITUTE FOR ASTRONOMY PERSONNEL AT THE UNIVERSITY PARK IN HILO.					
		DESIGN				1,011	
		CONSTRUCTION		6,859		3,005	
		EQUIPMENT		1		1	
		TOTAL FUNDING	AGS	6,860C		4,017C	
88.	694	UHM, REPLACEMENT OF FUEL STORAGE TANKS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REPLACEMENT OF FUEL STORAGE TANKS.					
		DESIGN		71			
		CONSTRUCTION		661			
		EQUIPMENT		77			
		TOTAL FUNDING	AGS	809C			C
89.	041	UHM, HAWAII HALL, OAHU					
		PLANS FOR A PROJECT DEVELOPMENT REPORT FOR THE RENOVATION OF HAWAII HALL.					
		PLANS		200			
		TOTAL FUNDING	AGS	200C			C
90.	R01	UHM, COCONUT ISLAND LONG RANGE DEVELOPMENT PLAN, OAHU					
		PLANS FOR A LONG RANGE DEVELOPMENT PLAN FOR COCONUT ISLAND.					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		PLANS		300			
		TOTAL FUNDING	UOH	300C			C
91.	695	UHM, KULA AGRICULTURAL EXPERIMENT STATION, MAUI					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION/ADDITION TO LABORATORY FACILITIES, RENOVATIONS TO EXISTING FACILITIES, AND OTHER RELATED IMPROVEMENTS FOR THE KULA AGRICULTURAL EXPERIMENT STATION.					
		PLANS		1			
		DESIGN		27			
		CONSTRUCTION		271			
		EQUIPMENT		1			
		TOTAL FUNDING	UOH	300C			C
92.	291	UHM, WOMEN'S SOFTBALL STADIUM, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A WOMEN'S SOFTBALL STADIUM. PROJECT TO INCLUDE A GRANDSTAND, FENCING, AND OTHER APPURTENANCES AT THE MAKAI CAMPUS.					
		PLANS		1			1
		DESIGN		49			1
		CONSTRUCTION		249			397
		EQUIPMENT		1			1
		TOTAL FUNDING	AGS	300C			C
			AGS		W		400W
92A.		UHM, PEARL CITY URBAN GARDEN CENTER, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE PEARL CITY URBAN GARDEN CENTER. PROJECT TO INCLUDE NEW ENTRY AND ROADWAY, CLASSROOM BUILDINGS, RENOVATION OF EXISTING STRUCTURES, WALKWAYS, PARKING, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					46
		CONSTRUCTION					635
		EQUIPMENT					17
		TOTAL FUNDING	UOH		C		698C
92B.	092	UHM, PACIFIC OCEAN SCIENCE AND TECHNOLOGY CENTER, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INSTRUCTIONAL AND RESEARCH FACILITIES FOR THE PACIFIC OCEAN SCIENCE AND TECHNOLOGY CENTER. FUNDS MAY BE USED FOR THE DEMOLITION OF EXISTING FACILITIES, AND THE RELOCATION AND RENOVATION FOR PROGRAMS AFFECTED BY THIS PROJECT.					
		DESIGN					220
		CONSTRUCTION					6,700
		EQUIPMENT					230
		TOTAL FUNDING	AGS		C		7,150C

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
UOH210 - UNIVERSITY OF HAWAII, HILO							
93.	440	UHH, UNIVERSITY PARK, PHASE II, HAWAII					
		DESIGN AND CONSTRUCTION FOR INFRASTRUCTURE AND OTHER IMPROVEMENTS AT THE UHH MAUKA CAMPUS SITE TO ACCOMMODATE THE DEVELOPMENT AND EXPANSION OF UHH'S STUDENT HOUSING, ACADEMIC AND RESEARCH PROGRAMS.					
		DESIGN			442		
		CONSTRUCTION			7,191		
		TOTAL FUNDING	AGS		7,633C		C
94.	344	UHH, KALAKAUA MARINE EDUCATION CENTER, HAWAII					
		PLANS AND DESIGN FOR THE KALAKAUA MARINE EDUCATION CENTER.					
		PLANS			99		
		DESIGN			1		
		TOTAL FUNDING	AGS		100C		C
94A.		UHH, RELOCATION OF TEMPORARY FACILITIES, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RELOCATION AND RENOVATION OF UP TO NINE TEMPORARY FACILITIES FROM THE KAPIOLANI COMMUNITY COLLEGE TO KEAHOLE FOR THE WEST HAWAII EDUCATIONAL CENTER. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS AND OTHER RELATED WORK.					
		DESIGN				135	
		CONSTRUCTION				1,000	
		EQUIPMENT				95	
		TOTAL FUNDING	AGS		R	1,230R	
94B.		UHH, FEDERAL RESEARCH FACILITY, HAWAII					
		PLANS AND DESIGN FOR A FEDERAL RESEARCH FACILITY LOCATED AT THE UNIVERSITY PARK AT THE UNIVERSITY OF HAWAII AT HILO.					
		PLANS				1	
		DESIGN				1,499	
		TOTAL FUNDING	UOH		N	1,500N	
UOH300 - HONOLULU COMMUNITY COLLEGE							
95.	A077	HON, SITE IMPROVEMENTS, PHASE I, OAHU					
		DESIGN AND CONSTRUCTION FOR THE EXPANSION OF PARKING AREA #4, DEMOLITION, CLEARING, GRADING, LANDSCAPING, ROADWAYS, WALKWAY, LIGHTING AND UTILITIES.					
		DESIGN			34		
		CONSTRUCTION				497	
		TOTAL FUNDING	AGS		34C	497C	

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
96.	A025	HON, HUMAN RESOURCES LABORATORY AND INCINERATOR DEMOLITION, OAHU					
		DESIGN AND CONSTRUCTION FOR NEW CLASSROOMS, LABORATORIES, FACULTY OFFICES AND SUPPORT FACILITIES FOR THE HUMAN RESOURCES PROGRAM INCLUDING EARLY CHILDHOOD EDUCATION. PROJECT TO INCLUDE THE DEMOLITION OF THE INCINERATOR.					
		DESIGN			102		442
		CONSTRUCTION					1,563
		TOTAL FUNDING	AGS		102C		2,005C
UOH330 - WINDWARD COMMUNITY COLLEGE							
97.	W100	WIN, CAMPUS DEVELOPMENT, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR NEW FACILITIES INCLUDING SITEWORK, UTILITIES, BUILDINGS, AND RENOVATION TO EXISTING FACILITIES.					
		DESIGN			1,838		1
		CONSTRUCTION			2,594		16,298
		EQUIPMENT			1,789		1
		TOTAL FUNDING	AGS		6,221C		16,300C
UOH500 - MAUI COMMUNITY COLLEGE							
98.	M100	MAU, CAMPUS DEVELOPMENT, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR NEW FACILITIES INCLUDING SITEWORK, UTILITIES, BUILDINGS, AND RENOVATION TO EXISTING FACILITIES.					
		DESIGN			2,191		1
		CONSTRUCTION			3,696		9,547
		EQUIPMENT			1		1
		TOTAL FUNDING	AGS		5,888C		9,549C
99A.		UHWO, INTERIM CAMPUS DEVELOPMENT, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RELOCATION AND RENOVATION OF NINETEEN TEMPORARY FACILITIES FROM THE KAPIOLANI COMMUNITY COLLEGE TO LEEWARD COMMUNITY COLLEGE TO ADDRESS ACCREDITATION REQUIREMENTS FOR THE INTERIM CAMPUS OF THE UNIVERSITY OF HAWAII-WEST OAHU. PROJECT MAY INCLUDE GROUND AND SITE IMPROVEMENTS AT KAPIOLANI COMMUNITY COLLEGE.					
		DESIGN					280
		CONSTRUCTION					2,717
		EQUIPMENT					95
		TOTAL FUNDING	AGS			C	3,092C
UOH900 - UOH, SYSTEM WIDE SUPPORT							

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
100.	503	SYS, LONG RANGE DEVELOPMENT PLANS AND LAND ACQUISITION, STATEWIDE					
		PLANS AND LAND ACQUISITION FOR LONG RANGE DEVELOPMENT PLANS, INCLUDING UPDATES OF LONG RANGE DEVELOPMENT PLANS FOR VARIOUS UNIVERSITY CAMPUSES; AND LAND ACQUISITION FOR UNIVERSITY PROGRAMS.					
		PLANS			300		300
		LAND			1		
		TOTAL FUNDING	UOH		300C		300C
			UOH		1R		R
101.	511	SYS, RENOVATIONS AND IMPROVEMENTS TO UNIVERSITY BOOKSTORES, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS AND IMPROVEMENTS TO UNIVERSITY OF HAWAII BOOKSTORES.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			497		
		EQUIPMENT			1		
		TOTAL FUNDING	UOH		500W		W
102.	536	SYS, HEALTH, SAFETY, AND CODE REQUIREMENTS, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MODIFICATIONS TO EXISTING FACILITIES AND/OR CONSTRUCTION OF NEW FACILITIES FOR HEALTH, SAFETY, AND OTHER CODE REQUIREMENTS.					
		PLANS			1		
		DESIGN			341		
		CONSTRUCTION			1,431		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		1,774C		C
103.	537	SYS, FIRE SAFETY IMPROVEMENTS, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FIRE SAFETY SYSTEMS. THE PROJECT MAY INCLUDE FIRE ALARM SYSTEMS, FIRE DETECTION SYSTEMS, FIRE SPRINKLER SYSTEMS AND CENTRAL FIRE ALARM SYSTEMS ON UNIVERSITY CAMPUSES AND FACILITIES, STATEWIDE.					
		PLANS			1		
		DESIGN			330		
		CONSTRUCTION			475		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		807C		C
103A.		SYS, REPLACEMENT AND/OR CLOSURE OF FUEL STORAGE TANKS, STATEWIDE					



## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REPLACEMENT/UPGRADE/CLOSURE OF FUEL STORAGE TANKS AND RELATED CLEANUP.					
		DESIGN					31
		CONSTRUCTION					215
		EQUIPMENT					1
		TOTAL FUNDING	AGS		C		247C
103B.		SYS, HAWAII INTERACTIVE TELEVISION SYSTEM (HITS), STATEWIDE					
		DESIGN FOR THE UPGRADE AND MODERNIZATION OF THE HAWAII INTERACTIVE TELEVISION SYSTEM (HITS), STATEWIDE. PROJECT TO INCLUDE UPGRADING MICROWAVE DISHES AND ASSOCIATED TOWER STRENGTHENING AND OTHER NECESSARY IMPROVEMENTS.					
		DESIGN					158
		TOTAL FUNDING	UOH		C		158C
103C.	540	SYS, RENOVATION OF CLASSROOMS, LABS, AND OTHER RELATED SPACES, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MODERNIZATION AND IMPROVEMENT OF CLASSROOMS, LABORATORIES, OFFICES, AND RELATED SPACES TO PROVIDE SAFER, MORE CONDUCTIVE TEACHING AND LEARNING ENVIRONMENTS FOR THE STUDENTS, FACULTY, AND STAFF.					
		DESIGN					125
		CONSTRUCTION					1,800
		EQUIPMENT					75
		TOTAL FUNDING	UOH		C		2,000C

## H. CULTURE AND RECREATION

## AGS881 - PERFORMING &amp; VISUAL ARTS EVENTS

## 0A. WAIPAHAU COMMUNITY FOUNDATION MONUMENT, OAHU

DESIGN AND CONSTRUCTION FOR A MONUMENT RECOGNIZING THE ONE HUNDRED YEARS OF SERVICE IN CONJUNCTION WITH THE WAIPAHAU CENTENNIAL ANNIVERSARY. THIS PROJECT IS TO BE LOCATED IN FRONT OF WAIPAHAU INTERMEDIATE SCHOOL. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42D, HRS.

DESIGN						20
CONSTRUCTION						200
TOTAL FUNDING	AGS			C		220C

## LNR804 - FOREST RECREATION

## 1A. MOKULEIA BEACH STATE PARK, MAUI

CONSTRUCTION FOR A SHORELINE ACCESS WALKWAY AT MOKULEIA BEACH, NAPII, MAUI.

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		CONSTRUCTION					20
		TOTAL FUNDING	LNR		C		20C
<b>LNR806 - PARK DEVELOPMENT AND OPERATION</b>							
2.	F46	KOKEE/WAIMEA CANYON COMPLEX, KAUAI					
		DESIGN AND CONSTRUCTION FOR PARK DEVELOPMENT, REPLACEMENT OF OLDER FACILITIES AND UTILITY IMPROVEMENTS INCLUDING WATER SYSTEM, SEWER SYSTEM, AND ROADS.					
		DESIGN				45	
		CONSTRUCTION				455	
		TOTAL FUNDING	LNR			500C	C
3.	H91	WAIOLA STATE PARK, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE DEVELOPMENT OF A MULTI-PURPOSE RECREATIONAL, CULTURAL, AND SPORTS PARK COMPLEX IN CENTRAL OAHU.					
		PLANS				1	
		LAND				1	
		DESIGN				98	
		CONSTRUCTION				100	
		TOTAL FUNDING	LNR			200C	C
3A.		MAKUA BEACH STATE PARK, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO MAKUA BEACH STATE PARK. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, LANDSCAPING, UTILITIES, AND OTHER RELATED WORK.					
		DESIGN					50
		CONSTRUCTION					450
		TOTAL FUNDING	LNR			C	500C
<b>LNR801 - OCEAN-BASED RECREATION</b>							
4.	020D	ALA WAI BOAT HARBOR FLOATING DOCK REPLACEMENT, OAHU					
		DESIGN FOR THE REPLACEMENT OF FLOATING DOCKS B, C, D, F, AND G.					
		DESIGN				97	
		TOTAL FUNDING	LNR			97B	B
5.	020G	ALA WAI BOAT HARBOR PIERS REPLACEMENT, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS/UPGRADE OF EXISTING PIERS.					
		DESIGN				144	
		CONSTRUCTION				575	
		TOTAL FUNDING	LNR			719B	B
6.		MAUNALUA BAY MAINTENANCE DREDGING, WATER QUALITY, AND OTHER IMPROVEMENTS, OAHU					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		PLANS, DESIGN, AND CONSTRUCTION FOR THE MAINTENANCE DREDGING, WATER QUALITY, AND OTHER IMPROVEMENTS OF THE MAUNALUA BAY OCEAN ENTRANCE CHANNEL TO THE HAWAII KAI MARINA.					
		PLANS			1		
		DESIGN			49		
		CONSTRUCTION			250		
		TOTAL FUNDING	LNR		300C		C
AGS889 - SPECTATOR EVENTS & SHOWS - ALOHA STADIUM							
7. SA9601 ALOHA STADIUM, PUBLIC ADDRESS SYSTEM, OAHU							
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT AND UPGRADE OF THE PUBLIC ADDRESS SYSTEM; INSTALL NEW SOUND SYSTEM TO INCLUDE COVERAGE IN THE SURROUNDING PARKING AREAS; AND INTEGRATION OF SOUND SYSTEM WITH VIDEO SCREEN CONTROL SYSTEM.					
		DESIGN			145		
		CONSTRUCTION					1,933
		TOTAL FUNDING	AGS		145B		1,933B
8. SA9602 ALOHA STADIUM, REPLACE SEATS, PHASE I, OAHU							
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF SEATS AND MOUNTING HARDWARE AT THE ORANGE AND BLUE SEATING LEVELS; PAINT, REPAIR, AND PERFORM OTHER MISCELLANEOUS WORK AT THE ORANGE SEATING LEVEL OF THE MAKAI MOVABLE STANDS.					
		DESIGN			194		
		CONSTRUCTION					2,909
		TOTAL FUNDING	AGS		194B		2,909B
9. SA9603 ALOHA STADIUM, REPLACE SEATS, PHASE II, OAHU							
		DESIGN FOR THE REPLACEMENT OF SEATS AND MOUNTING HARDWARE AT THE ORANGE AND BLUE SEATING LEVELS; PAINT, REPAIR, AND PERFORM OTHER MISCELLANEOUS WORK AT THE ORANGE SEATING LEVEL OF THE MAUKA MOVABLE STANDS.					
		DESIGN					194
		TOTAL FUNDING	AGS		B		194B
10. SA9606 ALOHA STADIUM, REPLACE SEATS, PHASE III, OAHU							
		DESIGN FOR THE REPLACEMENT OF SEATS AND MOUNTING HARDWARE AT THE YELLOW, RED, AND BROWN SEATING LEVELS OF THE MAUKA AND MAKAI MOVABLE STANDS.					
		DESIGN					116
		TOTAL FUNDING	AGS		B		116B

**LNR807 - PARK INTERPRETATION**

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
10A.		STATEWIDE INTERPRETIVE DEVELOPMENT, STATEWIDE DESIGN, CONSTRUCTION, AND EQUIPMENT FOR KIOSKS AT STATE PARKS.					
		DESIGN					70
		CONSTRUCTION					279
		EQUIPMENT					1
		TOTAL FUNDING	LNR		B		350B
<b>I. PUBLIC SAFETY</b>							
<b>PSD402 - HALAWA CORRECTIONAL FACILITY</b>							
1.	P96025	HALAWA CORRECTIONAL FACILITY, FUEL STORAGE TANK UPGRADE, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO REPLACE THE EXISTING FUEL SYSTEM WITH ONE CONFORMING WITH FEDERAL ENVIRONMENTAL PROTECTION AGENCY MANDATES FOR FUEL STORAGE AND DISPENSING.					
		DESIGN					35
		CONSTRUCTION					441
		TOTAL FUNDING	AGS		C		476C
1A.		HALAWA MEDIUM SECURITY FACILITY, SITE DEVELOPMENT, OAHU					
		CONSTRUCTION FOR THE COMPLETION OF SITE DEVELOPMENT FOR THE HALAWA MEDIUM SECURITY FACILITY.					
		CONSTRUCTION					112
		TOTAL FUNDING	AGS		C		112C
<b>PSD403 - KULANI CORRECTIONAL FACILITY</b>							
2.	P96021	KULANI CORRECTIONAL FACILITY, HAWAII					
		DESIGN AND CONSTRUCTION FOR VARIOUS IMPROVEMENTS TO UPGRADE THE EXISTING ELECTRICAL SYSTEM AT THE KULANI CORRECTIONAL FACILITY.					
		DESIGN			1		
		CONSTRUCTION		1,434			
		TOTAL FUNDING	AGS	1,435C			C
<b>PSD404 - WAIAWA CORRECTIONAL FACILITY</b>							
2A.	P97049	WAIAWA CORRECTIONAL FACILITY, OAHU					
		DESIGN AND CONSTRUCTION FOR INTERIM IMPROVEMENTS TO THE FACILITY'S ON-SITE WATER FILTRATION AND STORAGE; SEWER TRANSMISSION, TREATMENT AND DISPOSAL SYSTEMS; AND ADDITIONAL ELECTRICAL SERVICE TO ENABLE THE WAIAWA CORRECTIONAL FACILITY TO GRADUALLY INCREASE ITS INMATE HOLDING CAPACITY.					
		DESIGN					81
		CONSTRUCTION					947

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		TOTAL FUNDING	AGS		C		1,028C
<b>PSD407 - OAHU COMMUNITY CORRECTIONAL CENTER</b>							
3.	P96023	OAHU COMMUNITY CORRECTIONAL CENTER, MODIFICATIONS TO EXISTING ROOF, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO EXISTING MODULE ROOFING SECTIONS TO CORRECT CHRONIC LEAKAGE DAMAGE.					
		DESIGN			1		
		CONSTRUCTION		267			
		TOTAL FUNDING	AGS	268C			C
4.	P96024	OAHU COMMUNITY CORRECTIONAL CENTER, IMPROVEMENTS TO LAUMAKA CENTER, OAHU					
		DESIGN AND CONSTRUCTION FOR ALTERATIONS AND MODIFICATIONS AT THE LAUMAKA WORK FURLOUGH CENTER TO CORRECT VARIOUS DEFICIENCIES.					
		DESIGN			4		
		CONSTRUCTION		69			
		TOTAL FUNDING	AGS	73C			C
<b>PSD409 - WOMEN'S COMMUNITY CORRECTIONAL CENTER</b>							
5.	P9605	WOMEN'S COMMUNITY CORRECTIONAL CENTER, PHASE III, INCREMENT I, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE WOMEN'S COMMUNITY CORRECTIONAL CENTER, PHASE III, INCREMENT I. PROJECT TO INCLUDE RENOVATIONS TO OLOMANA COTTAGE TO CONVERT FACILITY FOR USE BY ADULT FEMALES.					
		DESIGN			419		
		CONSTRUCTION					1
		EQUIPMENT					199
		TOTAL FUNDING	AGS	419C			200C
6.	P96022	WOMEN'S COMMUNITY CORRECTIONAL CENTER, MISCELLANEOUS IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO VARIOUS BUILDING SYSTEMS TO SATISFY CONSENT DECREE REQUIREMENTS.					
		DESIGN			17		
		CONSTRUCTION			188		
		TOTAL FUNDING	AGS	205C			C
<b>PSD900 - GENERAL ADMINISTRATION</b>							
7.	P9507	REMOVAL OF ASBESTOS MATERIALS, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
PLANS, DESIGN, AND CONSTRUCTION FOR ASBESTOS ABATEMENT ACTIONS AT ANY LOCATION BEING USED BY ANY PSD OPERATING UNIT, STATEWIDE, REMOVE EXISTING ASBESTOS MATERIALS AND REPLACE WITH ACCEPTABLE SUBSTITUTES.							
		PLANS			24		
		DESIGN			16		
		CONSTRUCTION			454		
		TOTAL FUNDING	AGS		494C		C

DEF110 - AMELIORATION OF PHYSICAL DISASTERS

8. A37 MAUI ARMY NATIONAL GUARD ARMORY, MAUI

DESIGN AND CONSTRUCTION FOR A MAJOR ARMORY COMPLEX CONSOLIDATING THE EXISTING FACILITY, UTILITIES, ACCESS ROAD, PARKING, SECURITY FENCING, AND OTHER RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN		715	
CONSTRUCTION			8,400
TOTAL FUNDING	AGS	313C	1,100C
	AGS	402N	7,300N

9. A44 ARMY NATIONAL GUARD, KAPOLEI/LEEWARD OAHU/CENTRAL OAHU, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR AN ARMY NATIONAL GUARD ARMORY CONSOLIDATED FACILITY OF PERMANENT STEEL AND MASONRY-TYPE CONSTRUCTION, UTILITIES, ACCESS ROAD, PARKING AREAS, SECURITY FENCING, AND OTHER RELATED WORK. PROJECT TO RENOVATE BUILDING 117 AT BARBERS POINT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS		300	
DESIGN		500	1,200
CONSTRUCTION			8,300
TOTAL FUNDING	DEF	300C	C
	DEF	500N	9,500N

10. A66 ARMY NATIONAL GUARD, RENOVATE BUILDING #282, BARBERS POINT, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR THE RENOVATION OF EXISTING BUILDING #282 (BARBERS POINT) TO CONSOLIDATE THE USPFO, CSMS #1, CH-47 HANGAR, THE CH-47 ARMORY AND BUILDING #301 ARMORY. THE PROJECT TO BE CONSTRUCTED OF PERMANENT MASONRY CONSTRUCTION, UTILITIES, ACCESS ROAD, PARKING, INTERIM RENOVATIONS, AND OTHER RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		PLANS			300		
		DESIGN					2,033
		CONSTRUCTION					7,967
		TOTAL FUNDING	DEF		300C		C
			DEF		N		10,000N
11.	C13	REPLACEMENT/UPGRADE OF DISASTER WARNING AND COMMUNICATION DEVICES, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INCREMENTAL ADDITION, REPLACEMENT, AND UPGRADE OF CIVIL DEFENSE WARNING SIRENS, OTHER WARNING DEVICES AND COMMUNICATIONS EQUIPMENT TO EXPAND THE COVERAGE OF WARNING SYSTEM TO KEEP PACE WITH NEW DEVELOPMENTS, GROWTH OF COMMUNITIES, AND POPULATION SHIFTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			1		1
		LAND			1		1
		DESIGN			37		37
		CONSTRUCTION			390		390
		EQUIPMENT			154		154
		TOTAL FUNDING	AGS		483C		483C
			AGS		100N		100N
12.	C27	800 MEGAHERTZ WARNING SIREN CONTROL UPGRADE, OAHU					
		PLANS, LAND ACQUISITION, AND DESIGN FOR THE CIVIL DEFENSE WARNING SIREN CONTROL SYSTEM ON OAHU TO BE UPGRADED TO AN 800 MEGAHERTZ TRANSCEIVER WITH AUTOMATED CONTROL AND REAL TIME REPORTING AND STATUS MONITORING.					
		PLANS					1
		LAND					1
		DESIGN					82
		TOTAL FUNDING	AGS		C		84C
13.	C28	UNDERGROUND FUEL STORAGE TANK FOR EMERGENCY STANDBY GENERATOR, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REPLACEMENT OF A 6,000 GALLON DIESEL FUEL STORAGE TANK FOR STATE CIVIL DEFENSE.					
		PLANS			1		
		LAND			1		
		DESIGN			22		
		CONSTRUCTION			48		
		EQUIPMENT			48		
		TOTAL FUNDING	AGS		120C		C
14.	C30	EMERGENCY SATELLITE COMMUNICATIONS SYSTEM, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR	M O F	FISCAL YEAR	M O F
				1995-96		1996-97	
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN EMERGENCY SATELLITE COMMUNICATIONS SYSTEM LINKING THE STATE EMERGENCY OPERATING CENTER WITH EACH COUNTY EMERGENCY OPERATING CENTERS.					
		PLANS			1		
		LAND			1		
		DESIGN			47		
		CONSTRUCTION			49		
		EQUIPMENT			253		
		TOTAL FUNDING	AGS		351C		C

K. GOVERNMENT-WIDE SUPPORT

GOV100 - OFFICE OF THE GOVERNOR

1. G01 PROJECT ADJUSTMENT FUND, STATEWIDE

DESIGN FOR THE ESTABLISHMENT OF A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT.

DESIGN			1		1
TOTAL FUNDING	GOV		1C		1C

BED104 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY

2. H73 KAKAAKO MAKAI DEVELOPMENT, OAHU

PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR COSTS OR PORTIONS THEREOF ASSOCIATED WITH THE DEVELOPMENT OF PUBLIC FACILITIES AND THE RELOCATION OF EXISTING USERS AND FACILITIES IN THE KAKAAKO WATERFRONT.

PLANS			1		
LAND			1		
DESIGN			498		
CONSTRUCTION			2,000		
TOTAL FUNDING	BED		2,500C		C

3. HCD001 KAKAAKO COMMUNITY DEVELOPMENT DISTRICT, OAHU

PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR PLANNING, DEVELOPMENT AND PROJECT COSTS, AS DEFINED IN CHAPTER 206E, HAWAII REVISED STATUTES, FOR KAKAAKO COMMUNITY DEVELOPMENT DISTRICT. FUNDS MAY BE USED TO MATCH FEDERAL AND NON-STATE FUNDS, AS MAY BE AVAILABLE.

PLANS			2,047		2,047
LAND			1		1
DESIGN			1		1
CONSTRUCTION			1		1
TOTAL FUNDING	BED		2,050C		2,050C



## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
4.	P93074	KAKAAKO COMMUNITY DEVELOPMENT DISTRICT, INCREMENTS 2, 3, AND 4, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR COSTS AND PORTIONS THEREOF ASSOCIATED WITH IMPROVEMENTS TO THE ROADWAY, DRAINAGE, SEWER, WATER, ELECTRICAL, TELEPHONE, AND CABLE TELEVISION SYSTEMS AND THE DEVELOPMENT OF PUBLIC FACILITIES.					
		PLANS			1		
		LAND			1		
		DESIGN			1		
		CONSTRUCTION		4,998			
		TOTAL FUNDING	BED	5,001E			E
4A.		WATER SOURCES FOR THE HAWAII COMMUNITY DEVELOPMENT AUTHORITY, OAHU					
		CONSTRUCTION FOR THE PURCHASE OF WATER SOURCE SUPPLY FROM THE CITY AND COUNTY OF HONOLULU BOARD OF WATER SUPPLY.					
		CONSTRUCTION					257
		TOTAL FUNDING	BED		W		257W
BUF101 - BUF - PRGM PLANNG, ANALYSIS & BUDGETING							
5.		BISHOP MUSEUM, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION, EXPANSION, AND/OR ADDITION TO THE BISHOP MUSEUM TO INCLUDE THE CONSTRUCTION OF A SCIENCE LEARNING CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42D, HRS.					
		DESIGN			1		
		CONSTRUCTION		2,998			
		EQUIPMENT			1		
		TOTAL FUNDING	AGS	3,000C			C
BUF161 - COMMUNICATION							
6.	BUF02	TELECOMMUNICATIONS SITE, OAHU					
		DESIGN FOR A TELECOMMUNICATIONS FACILITY TO SUPPLEMENT THE EXISTING TELECOMMUNICATIONS SITE AT ROUND TOP AND THE CAPITOL COMPLEX.					
		DESIGN			66		
		TOTAL FUNDING	AGS		66C		C
8.	ICSD04	EMERGENCY GENERATOR FOR MICROWAVE SITE AT UHH, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION AND ENCLOSURE OF AN EMERGENCY GENERATOR, FUEL STORAGE TANKS, AND ELECTRICAL WORK. PROJECT TO LOCATE A MICROWAVE FACILITY AT THE UNIVERSITY OF HAWAII AT HILO.					
		DESIGN			36		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		CONSTRUCTION			190		
		TOTAL FUNDING	AGS		226C		C
9.	101004	MICROWAVE TOWER AND GENERATOR ENCLOSURE, MOLOKAI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A MICROWAVE TOWER AND GENERATOR AT THE KAUNAKAKAI CIVIC CENTER. TOWER SHALL SUPPORT THE MICROWAVE ANTENNA TO LINK KAUNAKAKAI TO THE STATEWIDE MICROWAVE BACKBONE.					
		DESIGN			26		
		CONSTRUCTION					171
		EQUIPMENT					1
		TOTAL FUNDING	AGS		26C		172C
<b>LNR101 - PUBLIC LANDS MANAGEMENT</b>							
10.	E89	MAKALAWENA EASEMENT ACQUISITION, NORTH KONA, HAWAII					
		LAND ACQUISITION FOR A PUBLIC RIGHT OF WAY EASEMENT.					
		LAND			1,375		
		TOTAL FUNDING	LNR		1,375B		B
11.	E85B	HANAPEPE TOWN LOTS COMMERCIAL PARK, KAUAI					
		PLANS AND DESIGN FOR THE PREPARATION OF A FEASIBILITY STUDY, MASTER PLAN, PROJECT DESIGN, CONSOLIDATION OF STATE LANDS AND RESUBDIVISION OF STATE LANDS INTO COUNTY APPROVED LOTS.					
		PLANS			50		
		DESIGN			100		
		TOTAL FUNDING	LNR		150B		B
12.	E85C	GENERAL LYMAN FIELD INDUSTRIAL PARK, HAWAII					
		PLANS AND DESIGN FOR THE PREPARATION OF A FEASIBILITY STUDY, MASTER PLAN, PROJECT DESIGN, CONSOLIDATION OF STATE LANDS AND RESUBDIVISION OF STATE LANDS INTO COUNTY APPROVED LOTS.					
		PLANS			50		
		DESIGN			100		
		TOTAL FUNDING	LNR		150B		B
13.	E85D	DLNR - OAHU BASEYARD, OAHU					
		DESIGN AND CONSTRUCTION FOR A DEPARTMENT BASEYARD, WAREHOUSE, AND PARKING AREA.					
		DESIGN			191		
		CONSTRUCTION					957
		TOTAL FUNDING	LNR		191B		957B
14.	E85H	HIENALOLI MASTER PLANNING, HAWAII					

## CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		PLANS AND DESIGN FOR THE PREPARATION OF A FEASIBILITY STUDY, MASTER PLAN, PROJECT DESIGN, AND SUBDIVISION OF STATE LAND INTO COUNTY APPROVED LOTS.					
		PLANS			50		
		DESIGN			100		
		TOTAL FUNDING	LNR		150B		B
14A.		PAUKAULA STREAM, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE DREDGING OF THE MOUTH OF PAUKAULA STREAM AS IT ENTERS KAIKA BAY TO PREVENT FLOODING.					
		PLANS					100
		DESIGN					50
		CONSTRUCTION					150
		TOTAL FUNDING	LNR		C		300C
AGS221 - CONSTRUCTION							
15.	A48	LIHUE MULTI-AGENCY MAINTENANCE AND SERVICE FACILITIES, PHASES 1, 2, 3, KAUAI					
		LAND ACQUISITION FOR THE PROVISION OF OFFICES, MAINTENANCE SHOPS, STORAGE AND VEHICLE SERVICING AREAS FOR DAGS KAUAI DISTRICT OFFICE.					
		LAND			1,700		
		TOTAL FUNDING	AGS		1,700C		C
16.	B27	ADVANCED PLANNING, STATEWIDE					
		PLANS FOR THE PROVISION OF ASSISTANCE TO THE PUBLIC, STATE AND COUNTIES IN MATTERS RELATING TO THE PUBLIC WORKS DIVISION. IT INCLUDES PREPARATION OF REPORTS, STUDIES, INVENTORIES, REVIEWS, AND PERFORMANCE OF ALL NECESSARY ACTIVITIES TO CARRY OUT DAGS FUNCTIONS.					
		PLANS			150		
		TOTAL FUNDING	AGS		150C		C
17.	B28	STATE OFFICE BUILDINGS REMODELING, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REMODELING AND UPGRADING OF OFFICES OCCUPIED BY STATE AGENCIES IN STATE OWNED SPACE STATEWIDE, TO PROVIDE ADEQUATE SPACE FOR AGENCIES TO ACCOMMODATE THEIR OPERATIONAL REQUIREMENTS. WORK INCLUDES REMODELING FOR REORGANIZATION, PROGRAM CHANGES, STAFFING CHANGES, CORRECTION OF INEFFICIENT OFFICE LAYOUTS, PLUMBING, ELEVATORS, ETC.					
		DESIGN			129		85
		CONSTRUCTION			654		477
		EQUIPMENT			19		

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		TOTAL FUNDING	AGS		802C		562C
18.	C43	KAHULUI CIVIC CENTER, PHASE I, MAUI					
		PLANS AND LAND ACQUISITION FOR THE DESIGN AND CONSTRUCTION OF THE KAHULUI CIVIC CENTER VIA LEASE BACK/PURCHASE OPTION AGREEMENT WITH PRIVATE DEVELOPER SELECTED BY REQUEST FOR PROPOSAL (RFP) PROCESS.					
		PLANS			499		
		LAND			1		
		TOTAL FUNDING	AGS		500C		C
19.	C101	LEIOPAPA A KAMEHAMEHA BUILDING RENOVATIONS, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF THE LEIOPAPA A KAMEHAMEHA BUILDING FOR NEW OCCUPANTS.					
		DESIGN			1		
		CONSTRUCTION			1,876		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		1,878C		C
20.	B101M	HEALTH AND SAFETY REQUIREMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE MITIGATION OF HAZARDOUS MATERIALS FROM STATE FACILITIES TO MEET CURRENT CODE REQUIREMENTS, STATEWIDE.					
		DESIGN			144		
		CONSTRUCTION			383		
		TOTAL FUNDING	AGS		527C		C
21.		CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM RELATED POSITIONS.					
		PLANS			5,498		5,498
		DESIGN			1		1
		CONSTRUCTION			1		1
		TOTAL FUNDING	AGS		5,500C		5,500C
24.		HOOKIEKIE STREET ROAD IMPROVEMENTS, OAHU					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR ROAD IMPROVEMENTS TO HOOKIEKIE STREET FRONTING MOMILANI ELEMENTARY SCHOOL.					
		LAND			5		
		DESIGN			25		

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		CONSTRUCTION		200			
		TOTAL FUNDING	AGS	230C			C
24A.		AIR CONDITIONING SYSTEM UPGRADES, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE UPGRADE OF AIR CONDITIONING SYSTEMS IN STATE BUILDINGS AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					1
		CONSTRUCTION					638
		EQUIPMENT					1
		TOTAL FUNDING	AGS		C		640C
24B.		RENOVATION OF THE OLD WAIPAHU LIBRARY, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF THE OLD WAIPAHU LIBRARY. PROJECT TO INCLUDE THE REMOVAL OF HAZARDOUS MATERIALS, RENOVATIONS TO ACCOMMODATE STATE OFFICES, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					52
		CONSTRUCTION					436
		EQUIPMENT					1
		TOTAL FUNDING	AGS		C		489C
SUB201 - CITY AND COUNTY OF HONOLULU							
25.		HONOLULU POLICE DEPARTMENT, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE UPGRADING OF THE TELECOMMUNICATIONS SYSTEM OF THE HONOLULU POLICE DEPARTMENT.					
		DESIGN			1		1
		CONSTRUCTION		1,898		3,298	
		EQUIPMENT		1		1	
		TOTAL FUNDING	CCH	1,900C		3,300C	
26.		MILILANI CHILD CARE CENTER, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MILILANI CHILD CARE CENTER.					
		DESIGN			1		
		CONSTRUCTION		398			
		EQUIPMENT		1			
		TOTAL FUNDING	CCH	400C			C
27.		WHITMORE AVENUE WALKWAY, OAHU					
		DESIGN AND CONSTRUCTION FOR AN ASPHALT CONCRETE WALKWAY ALONG WHITMORE AVENUE FROM UAKANIKO'O STREET TO IHIIIH AVENUE.					
		DESIGN			1		
		CONSTRUCTION		149			
		TOTAL FUNDING	CCH	150C			C

CAPITAL IMPROVEMENT PROJECTS

				APPROPRIATIONS (IN 000's)			
ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
27A.		IMPROVEMENTS IN THE VICINITY OF THE CONVENTION CENTER, OAHU					
		PLANS FOR IMPROVEMENTS IN THE VICINITY OF THE HONOLULU CONVENTION CENTER, INCLUDING KONA STREET AND FREEWAY ACCESS ROUTES FROM KEEAUMOKU STREET AND PIIKOI STREET.					
		PLANS					250
		TOTAL FUNDING	CCH		C		250C
SUB301 - COUNTY OF HAWAII							
28.		PIIHONUA RESERVOIR AND TRANSMISSION LINES, HAWAII					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE PIIHONUA RESERVOIR AND TRANSMISSION LINES TO ACCOMMODATE ADDITIONAL WATER USAGE IN HILO.					
		PLANS			1		
		LAND			1		
		DESIGN			1		
		CONSTRUCTION		1,096			
		EQUIPMENT			1		
		TOTAL FUNDING	COH	1,100C			C
29.		KA'U AGRICULTURAL WATER SYSTEM, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN AGRICULTURAL WATER SYSTEM IN KA'U.					
		DESIGN			1		
		CONSTRUCTION		498			
		EQUIPMENT			1		
		TOTAL FUNDING	COH	500C			C
29A.		KAUPAKUEA HOMESTEAD ROAD, HAWAII					
		CONSTRUCTION FOR GRADING, DRAINAGE IMPROVEMENTS, AND PAVING OF KAUPAKUEA HOMESTEAD ROAD, PHASE I.					
		CONSTRUCTION					25
		TOTAL FUNDING	COH		C		25C
SUB401 - COUNTY OF MAUI							
30.		MAUI COMMUNITY ARTS AND CULTURAL CENTER, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MAUI COMMUNITY ARTS AND CULTURAL CENTER.					
		DESIGN			1		
		CONSTRUCTION		998			
		EQUIPMENT			1		
		TOTAL FUNDING	COM	1,000C			C
31.		NISEI VETERANS MEMORIAL CENTER, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE NISEI VETERANS MEMORIAL CENTER.					

## CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 1995-96	M O F	FISCAL YEAR 1996-97	M O F
		DESIGN			1		
		CONSTRUCTION			998		
		EQUIPMENT			1		
		TOTAL FUNDING	COM	1,000C			C
31A.		MOLOKAI SLAUGHTERHOUSE, MOLOKAI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MOLOKAI SLAUGHTERHOUSE.					
		DESIGN					1
		CONSTRUCTION					498
		EQUIPMENT					1
		TOTAL FUNDING	COM		C		500C
<b>SUB501 - COUNTY OF KAUAI</b>							
31B.		ANAHOLA WATER SYSTEM, KAUAI					
		CONSTRUCTION FOR A 500,000 GALLON STORAGE TANK AND CONNECTING PIPELINES AND RELATED APPURTENANCES.					
		CONSTRUCTION					440
		TOTAL FUNDING	COK		C		440C"

SECTION 6. PART V, Act 218, Session Laws of Hawaii 1995, is amended:

- (1) By repealing section 102.
- (2) By repealing section 104.
- (3) By repealing section 105.
- (4) By adding a new section to read as follows:

“SECTION 105.1. Provided that of the general obligation bond fund appropriation for water and land development (LNR 141), the sum of \$25,000 for fiscal year 1996-1997 shall be used for construction for water sources for state projects, Oahu; provided further that the general obligation bond fund appropriation shall be used to purchase water source supply from the city and county of Honolulu board of water supply; and provided further that the water source supplies purchased with the general obligation bond fund appropriation shall be credited to the department of land and natural resources for allocation to legislatively appropriated state projects.”

- (5) By adding a new section to read as follows:

“SECTION 105.2. Provided that of the special funds appropriation for Keahole airport (TRN 114), the sum of \$1,099,000 for fiscal biennium 1995-1997 shall be used for plans, land acquisition, design, and construction for Hina Lani drive water transmission line and reservoir, Hawaii; provided further that the special funds appropriation shall be credited to the department of transportation; and provided further that the credited amounts shall apply to the pro rata share of the total development cost as identified in the memorandum of understanding for state water development and water system improvements to support state projects, north Kona, Hawaii.”

- (6) By adding a new section to read as follows:

“SECTION 105.3. Provided that of the special funds appropriation for Keahole airport (TRN 114), the sum of \$1,539,000 for fiscal biennium 1995-1997 shall be used for plans, design, and construction for Keahole reservoir, Hawaii; provided further that the special funds appropriation shall be credited to the department of transportation; and provided further that the credited amounts shall apply to the pro rata share of the total development cost as identified in the memorandum of understanding for state water development and water system improvements to support state projects, north Kona, Hawaii.”

(7) By adding a new section to read as follows:

“SECTION 106.1. Provided that of the special funds appropriation for airports administration (TRN 195), the sum of \$497,000 for fiscal year 1996-1997 shall be used for construction for water sources for department of transportation airports division, Oahu; provided further that the special funds appropriation shall be transferred to the department of land and natural resources to purchase water source supply from the city and county of Honolulu board of water supply; and provided further that the water source supplies purchased with the special funds appropriation shall be credited to the department of transportation airports division.”

(8) By amending section 108 to read as follows:

“SECTION 108. Provided that of the other federal funds appropriation for Oahu highways (TRN 501), the sum of [\$8,160,000] \$15,728,000 for fiscal [year 1995-1996] biennium 1995-1997 shall be used for design and construction for interstate H-2, Waipio interchange improvements, Oahu; provided further that no funds shall be expended unless the state's pro rata matching share for the federal funds are paid with private contributions; and provided further that no funds shall be expended unless the private developer enters into an agreement with the state to reimburse the state highway fund for all federal funds used for this project.”

(9) By repealing section 111.

(10) By adding a new section to read as follows:

“SECTION 111.1. Provided that of the other federal funds appropriation for Oahu highways (TRN 501), the sum of \$6,480,000 for fiscal year 1996-1997 shall be used for construction for interstate H-1, Makakilo interchange improvements, Oahu; provided further that no funds shall be expended unless the state's pro rata matching share for the federal funds are paid with private contributions; and provided further that no funds shall be expended unless the private developer enters into an agreement with the state to reimburse the state highway fund for all federal funds used for this project.”

(11) By adding a new section to read as follows:

“SECTION 111.2. Provided that of the special funds appropriation for Oahu highways (TRN 501), the sum of \$2,940,000 for fiscal year 1996-1997 shall be used for construction for water sources for department of transportation highways division, Oahu; provided further that the special funds appropriation shall be transferred to the department of land and natural resources to purchase water source supply from the city and county of Honolulu board of water supply; and provided further that the water source supplies purchased with the special funds appropriation shall be credited to the department of transportation highways division.”



(12) By adding a new section to read as follows:

“SECTION 117.1. Provided that of the general obligation bond fund appropriation for housing assistance administration (HMS 229), the sum of \$220,000 for fiscal year 1996-1997 shall be used for plans, design, and construction for Kuhio park terrace multi-purpose community facility, Oahu; provided further that no funds shall be expended unless the Hawaii housing authority enters into an agreement for the use of the facility with a family service agency; and provided further that no general obligation bond funds shall be expended for construction of the facility unless matched by a minimum of \$65,000 in private contributions.”

(13) By adding a new section to read as follows:

“SECTION 117.2. Provided that of the revolving funds appropriation for private housing development and ownership (BUF 225), the sum of \$363,000 for fiscal year 1996-1997 shall be used for construction for water source for the housing finance and development corporation, Oahu; provided further that the revolving funds appropriation shall be transferred to the department of land and natural resources to purchase water source supply from the city and county of Honolulu board of water supply; and provided further that the water source supplies purchased with the revolving funds appropriation shall be credited to the housing finance and development corporation.”

(14) By amending section 122 to read as follows:

“SECTION 122. Provided that any amount appropriated for any capital improvements program project authorized in part II and listed in formal education, part G of part IV of this Act and funded from the state educational facilities improvement special fund and is in excess of the amount required to complete the project, such excess funds may be expended with the approval of the governor for any or all of the following projects and purposes:

- (1) Kapolei high school, Oahu  
Design, construction, and equipment for first increment, ground and site improvements, equipment and appurtenances.
- (2) Kapolei intermediate school, Oahu  
Design, construction, and equipment for first increment, ground and site improvements, equipment and appurtenances.
- (3) Kealahou intermediate school, Hawaii  
Design, construction, and equipment for library, parking, sewer system, lavatories, media and audio-visual centers, ground and site improvements, equipment and appurtenances.
- (4) Keonepoko elementary school, Hawaii  
Design, construction, and equipment for phase III, ground and site improvements, equipment and appurtenances.
- (5) Lokelani intermediate school, Maui  
Design, construction, and equipment for the cafetorium, ground and site improvements, equipment and appurtenances.
- (6) Wailuku elementary II school (new), Maui  
Design, construction, and equipment for first increment, ground and site improvements, equipment and appurtenances.
- (7) Samuel Enoka Kalama intermediate school, Maui  
Design, construction, and equipment for a library facility, renovation of existing library spaces into classrooms, ground and site improvements, equipment and appurtenances.

- (8) Kapaa II elementary school, Kauai  
Design, construction, and equipment for first increment, ground and site improvements, equipment and appurtenances.
- (9) Laie elementary school, Oahu  
Design, construction, and equipment for the expansion of the cafeteria, ground and site improvements, equipment and appurtenances.
- (10) Makalapa elementary school, Oahu  
Design, construction, and equipment for an administration building, renovation of existing administration spaces into classrooms, ground and site improvements, equipment and appurtenances.
- (11) Mountain View elementary school, Hawaii  
Design, construction, and equipment for a classroom building to replace building A, ground and site improvements, equipment and appurtenances.
- (12) Waiau elementary school, Oahu  
Design, construction, and equipment for an administration/library building, renovation of existing administration/library spaces into classrooms, ground and site improvements, equipment and appurtenances."

(15) By repealing section 123.

(16) By adding a new section to read as follows:

"SECTION 123.1. Provided that of the special funds appropriation for school based budgeting (EDN 100), the sum of \$5,000,000 for fiscal year 1996-1997 shall be used for design, construction, and equipment for the relocation or construction of temporary facilities, statewide; provided further that the department of education and the department of accounting and general services shall prepare bid specifications for the construction of no less than three temporary facilities utilizing wood and other materials; provided further that the bid specifications shall meet educational specifications and all building code requirements; and provided further that the department of education and the department of accounting and general services shall submit a report on the comparative costs between wood and other materials no less than twenty days prior to the convening of the regular session of 1997."

(17) By adding a new section to read as follows:

"SECTION 123.2. Provided that of the special funds appropriation for school based budgeting (EDN 100), the sum of \$190,000 for fiscal year 1996-1997 shall be used for construction for water sources for the department of education, Oahu; provided further that the special funds appropriation shall be transferred to the department of land and natural resources to purchase water source supply from the city and county of Honolulu board of water supply; and provided further that the water source supplies purchased with the special funds appropriation shall be credited to the department of education."

(18) By amending section 125 to read as follows:

"SECTION 125. Provided that of the general obligation bond fund appropriation for university of Hawaii at Hilo (UOH 210), the sum of \$7,633,000 for fiscal year 1995-1996 shall be used for the university of Hawaii at Hilo, university park, phase II, Hawaii; provided further that no construction funds shall be expended unless the scope of the project includes the full construction of a roadway connecting the university park to Kawili street; provided further that this roadway shall be a two lane roadway [in each direction with median;] with a four lane divided main

entrance from Kawili street; provided further that funds may be used for an entrance sign, covered drop-off/pick-up area, parking, and related improvements; and provided further that funds may be used for the improvement of existing connecting roadways and the relocation of existing facilities and improvements affected by this project."

(19) By adding a new section to read as follows:

"SECTION 125.1. Provided that of the private contributions appropriation for university of Hawaii at Hilo (UOH 210), the sum of \$1,230,000 for fiscal year 1996-1997 shall be used for the relocation of temporary facilities, Hawaii; provided further that the private contributions shall be used for design, construction, and equipment for the relocation and renovation of up to nine temporary facilities from the Kapiolani community college campus to Keahole for the west Hawaii educational center; provided further that the university may exceed the private contributions appropriation level for the relocation and renovation of the temporary facilities; provided further that if private contributions cannot sustain the total cost for the relocation and renovation of the temporary facilities by December 31, 1996, the university, with concurrence with the department of education, may transfer the ownership of up to nine temporary facilities to the department of education; and provided further that any portables transferred to the department of education shall be used for educational purposes and the department of education shall bear all costs associated with the relocation of portables for department of education purposes."

(20) By repealing section 126.

(21) By adding a new section to read as follows:

"SECTION 126.1. Provided that of the revolving funds appropriation for Hawaii community development authority (BED 104), the sum of \$257,000 for fiscal year 1996-1997 shall be used for construction for water sources for the Hawaii community development authority, Oahu; provided further that the revolving funds appropriation shall be transferred to the department of land and natural resources to purchase water source supply from the city and county of Honolulu board of water supply; and provided further that the water source supplies purchased with the revolving funds appropriation shall be credited to the Hawaii community development authority."

(22) By repealing section 134.

(23) By repealing section 135.

(24) By amending section 136 to read as follows:

"SECTION 136. Provided that of the general obligation bond fund appropriation for the city and county of Honolulu (SUB 201), the sum of [\$1,900,000] \$5,200,000 for fiscal biennium 1995-1997 shall be used for design, construction, and equipment for the Honolulu police department telecommunications system; provided further that the city and county of Honolulu shall coordinate the system with the state department of budget and [finance;] finance, state department of transportation, state department of public safety, state department of land and natural resources, state department of defense, and all other interested state agencies for the purpose of a share use agreement of the telecommunications system; provided further that the engineering of the system shall be reviewed by the [State] state, and that the [State] state shall be given an opportunity to comment and have input on the final design and bid specifications; provided further that the city and county of Honolulu shall prepare a report outlining the city and county of Honolulu's efforts to

jointly develop the telecommunications system with the state; provided further that the city and county of Honolulu shall submit this report to the legislature no later than twenty days prior to the convening of the 1997 regular session; and provided further that no state funds shall be expended unless matched on a dollar-for-dollar basis with funds from the city and county of Honolulu."

(25) By adding a new section to read as follows:

"SECTION 137.1. Provided that of the general obligation bond fund appropriation for the county of Kauai (SUB 501), the sum of \$440,000 for fiscal year 1996-1997 shall be used for construction for the Anahola water system, Kauai; provided further that no funds shall be expended unless the state receives an appropriate number of water credits from the county of Kauai board of water supply; provided further that the number of water credits given to the state must be agreed to by the department of land and natural resources; and provided further that the county of Kauai shall submit a report on the number of water credits given to the state no later than twenty days prior to the convening of the regular session of 1997."

(26) By adding a new section to read as follows:

"SECTION 152.1. Any law to the contrary notwithstanding, the appropriations under Act 289, Session Laws of Hawaii 1993, section 127, as amended and renumbered by Act 252, Session Laws of Hawaii 1994, section 5, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

Item No.	Amount (MOF)
AGR 141-4B	\$ 30,000W
AGR 192-5C	30,000 C
LBR 903-3A	1,500,000 C
TRN 195-21A	5,000,000 E
TRN 351-33	151,000 B
TRN 351-33	1,000,000 E
TRN 395-36	400,000 B
TRN 501-44	2,000,000 E
TRN 501-59B	2,182,000 B
TRN 511-63	5,098,000 E
TRN 511-64A	5,000,000 B
TRN 511-64B	4,400,000 B
TRN 531-65	9,935,000 B
TRN 531-65	6,000,000 E
TRN 531-74A	3,100,000 B
TRN 531-74B	4,000,000 B
TRN 561-78C	1,980,000 B
HTH 111-2	3,210 C
HTH 111-3	5,192 C
HTH 212-4	536,838 C
HTH 221-7	1,535 C
HTH 221-9	1,000 C
HTH 420-16B	95,256 C
HTH 907-18B	92,700 C
EDN 100-13B	135,000 B
EDN 100-18	363,000 C
EDN 100-21	75,000 B

<u>Item No.</u>	<u>Amount (MOF)</u>
EDN 100-24	100,000 B
EDN 100-25	675,000 B
EDN 100-25A	675,000 B
EDN 100-27	750,000 B
EDN 100-27A	40,000 B
EDN 100-30	600,000 B
EDN 100-47	225,000 B
EDN 100-50	700,000 B
EDN 100-51	675,000 B
EDN 100-53	570,200 C
EDN 100-54	675,000 B
EDN 100-71	1,233,000 B
EDN 100-72	978,000 B
EDN 100-80	258,010 C
EDN 100-82	1,200,000 C
EDN 100-83	765,500 C
EDN 100-84	200,000 C
EDN 100-85B	150,000 C
EDN 100-95	251,500 C
EDN 100-97B	400,000 C
EDN 100-98	35,000 C
EDN 100-98A	50,000 C
EDN 100-99A	120,000 C
EDN 100-100A	50,000 C
EDN 407-107	1,141,311 C
EDN 407-109	100,000 C
UOH 900-123B	300,000 C
AGS 881-1	400,000 C
LNR 806-4	34,700 C
AGS 889-11	19,474 B
AGS 889-13	19,094 B
AGS 889-14	14,085 B
GOV 100-1	1,000 C
BED 104-4	1,414,000 C
LNR 101-8	535,000 B
LNR 101-9	10,000 B
LNR 101-9C	1,200,000 C
AGS 221-11	92,000 C
AGS 221-16	1,000,000 C
SUB 201-17	2,126,000 C
SUB 201-17A	250,000 C
SUB 201-17C	200,000 C
SUB 201-17D	3,300,000 C
SUB 301-19	300,000 C
SUB 301-21A	488,000 C
SUB 401-24	1,000,000 C
SUB 401-24B	1,800,000 C
SUB 401-24C	500,000 C
SUB 501-25	3,000,000 C
SUB 501-27A	2,000,000 C''

(27) By adding a new section to read as follows:

“SECTION 152.2. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and reimbursement under Act 289, Session Laws of Hawaii 1993, section 127, as amended and renumbered by Act 252, Session Laws of Hawaii 1994, section 5, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
TRN 131-15	\$17,925,000 B
TRN 131-16	2,500,000 B
TRN 131-17	17,655,731 E
TRN 131-17	2,000,000 N
TRN 351-34	200,000 B
TRN 351-34	500,000 N
UOH 100-117	4,017,000 C
UOH 100-117	10,000,000 N”

(28) By adding a new section to read as follows:

“SECTION 152.3. Any law to the contrary notwithstanding, the appropriation under Act 289, Session Laws of Hawaii 1993, section 127, as amended and renumbered by Act 252, Session Laws of Hawaii 1994, section 5, as amended by Act 218, Session Laws of Hawaii 1995, section 138, in the amount indicated or balance thereof, unallotted, encumbered and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
BED 102-1	\$ 5,089,000 C”

(29) By adding a new section to read as follows:

“SECTION 152.4. Any law to the contrary notwithstanding, the general obligation bond fund appropriation under Act 7, First Special Session of Hawaii 1993, sections 7, 8, 23, 28(4)A4, and 29, in the amount of \$2,000,000 or balance thereof, encumbered and unrequired, is hereby lapsed.”

(30) By adding a new section to read as follows:

“SECTION 152.5. Any law to the contrary notwithstanding, the appropriations under Act 296, Session Laws of Hawaii 1991, section 165, as amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 6, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
BED 102-1	\$ 3,804 C
LNR 172-7	46,845 C
AGR 141-8	14,151 C
AGR 141-9	5,099 C
AGR 141-10	7,137 C
AGR 141-11	21,517 C
AGR 141-11A	20,081 C
LNR 153-13	49,177 C
BED 120-21	1 C
TRN 102-1	2,129,335 N

<u>Item No.</u>	<u>Amount (MOF)</u>
TRN 102-2	1,000,000 N
TRN 102-3	1,000,000 N
TRN 102-4	1,000,000 N
TRN 102-6	200,000 N
TRN 102-7	1,000,000 N
TRN 111-8	2,000,000 N
TRN 114-9	4,552,801 N
TRN 114-10	2,000,000 N
TRN 131-11	2,000,000 N
TRN 131-12	1,000,000 N
TRN 141-14	100,000 N
TRN 161-15	557,344 N
TRN 195-16	100,000 N
TRN 195-17	500,000 N
TRN 311-23	4,570,000 N
TRN 501-58	4,596 D
LNR 402-3	22 C
LNR 402-4	21,950 C
LNR 402-6	1,248 C
LNR 402-8B	14,356 C
LNR 404-9	13,503 C
LNR 404-10	22,800 C
LNR 404-11	8,708 C
LNR 404-13	32,869 C
LNR 404-14	7,666 C
LNR 404-14A	447,811 C
LNR 405-15	968 C
HTH 111-1	57,339 C
HTH 215-4	293,253 C
HTH 221-6	136,488 C
HTH 222-7	8,555 C
HTH 231-8	39,341 C
HTH 241-9	82,287 C
HTH 420-13	335 C
HTH 610-17A	136,136 C
HTH 907-19	68,180 C
HTH 907-21	43,129 C
HTH 907-21A	9,841 C
HMS 501-1	300,000 C
HMS 807-10	1,529 C
HHL 602-19	8,639 C
HHL 602-20	79 C
HHL 602-27	37,038 C
HMS 904-29	9,401 C
EDN 105-1	399,109 B
EDN 105-2	97,279 B
EDN 105-3	31,955 B
EDN 105-4	3,108 B
EDN 105-5	33,468 B
EDN 105-7	515,599 B
EDN 105-8	9,465 B
EDN 105-9	27,437 B

<u>Item No.</u>	<u>Amount (MOF)</u>
EDN 105-11	200,000 B
EDN 105-14	9,917 B
EDN 105-21	47,357 B
EDN 105-25	67,993 B
EDN 105-26	3,450 B
EDN 105-30	12,385 B
EDN 105-31	774,745 B
EDN 105-41	353,398 B
EDN 105-48	396,861 B
EDN 105-56	88,470 B
EDN 105-61A	39 B
EDN 105-64	19,291 B
EDN 105-76	49,969 C
EDN 105-77	7,201 C
EDN 105-78	2,794 C
EDN 105-85	13,859 C
EDN 105-86	4,589 C
EDN 105-89	3,106 C
EDN 203-94	344,055 C
EDN 305-98	4,265 C
EDN 305-99	395 C
EDN 407-103	65,619 C
EDN 407-104	24 C
EDN 407-105	239,973 C
EDN 407-106	117,706 C
EDN 407-107	106,993 C
EDN 407-109	59,639 C
EDN 407-112	67,764 C
EDN 407-113	12,748 C
UOH 101-115	114,410 C
UOH 101-116	24,414 C
UOH 101-117	28,629 C
UOH 101-119	1,126 C
UOH 102-123	370,702 C
UOH 102-125	38,280 C
UOH 105-130	2,589 C
UOH 106-133	4,608 C
UOH 106-134	14,342 C
UOH 216-140	46,457 C
UOH 906-147	44 C
CCA 701-4	5,813 C
LNR 802-6	38,304 C
LNR 802-6A	4,631 C
LNR 804-7	4,024 C
LNR 806-10	1,528 C
LNR 806-11	13,076 C
LNR 806-13	14,327 C
LNR 806-16	1,590 C
LNR 806-20	137,222 C
LNR 806-21	15,421 C
LNR 806-23	252,410 C
LNR 806-24	10,000 C



<u>Item No.</u>	<u>Amount (MOF)</u>
TRN 801-30	1,629 D
TRN 801-31	20,197 D
TRN 801-32	46,400 D
TRN 801-33	109,005 D
TRN 801-34	1 D
AGS 889-43	5,953 C
AGS 889-44	230,634 C
AGS 889-45	4,948 C
PSD 402-1	1,057,952 C
PSD 404-3	99,873 C
PSD 405-4	33,354 C
PSD 408-7	105,805 C
PSD 900-9	193,972 C
PSD 900-11	1,693 C
PSD 900-11B	10,000,000 N
BUF 161-11	8,220 C
LNR 101-14	5,116 C
AGS 221-17	163,723 C
AGS 221-18	24,249 C
AGS 221-23	8,535 C
AGS 221-30	1,960 C
SUB 501-44	500 C''

(31) By adding a new section to read as follows:

“SECTION 152.6. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and reimbursement under Act 296, Session Laws of Hawaii 1991, section 165, as amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 6, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
TRN 595-90	\$ 6,373 D
UOH 101-118	\$ 6,000,000 N''

(32) By adding a new section to read as follows:

“SECTION 152.7. Any law to the contrary notwithstanding, the appropriation under Act 296, Session Laws of Hawaii 1991, section 165, as amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 6, as amended by Act 289, Session Laws of Hawaii 1993, section 133, in the amount indicated or balance thereof, unallotted, encumbered and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
AGS 221-25	\$ 407,495 C''

(33) By adding a new section to read as follows:

“SECTION 152.8. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and reimbursement under Act 296, Session Laws of Hawaii 1991, section 165, as

amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 6, as amended by Act 289, Session Laws of Hawaii 1993, section 133, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
UOH 101-122	\$11,000,000 C
UOH 101-122	\$ 5,000,000 N”

(34) By adding a new section to read as follows:

“SECTION 152.9. Any law to the contrary notwithstanding, the appropriations under Act 296, Session Laws of Hawaii 1991, section 165, as amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 6, as amended by Act 289, Session Laws of Hawaii 1993, section 134, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
PSD 403-2	\$ 71,885 C
PSD 405-4A	37,555 C
PSD 405-4B	2,852 C
PSD 406-5	21,564 C
PSD 406-5A	2,645 C
PSD 407-6A	55,989 C”

(35) By adding a new section to read as follows:

“SECTION 152.10. Any law to the contrary notwithstanding, the general obligation bond fund appropriation under Act 323, Session Laws of Hawaii 1992, section 6, in the amount of \$556 or balance thereof, unallotted, encumbered and unrequired, is hereby lapsed.”

(36) By adding a new section to read as follows:

“SECTION 152.11. Any law to the contrary notwithstanding, the appropriations under Act 317, Session Laws of Hawaii 1991, section 2, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
TRN 501-6	\$ 47,551 C
HTH 231-4	16,808 C
EDN 105-8	3,317 C
EDN 105-56	509 C
EDN 105-60	4,530 C
EDN 105-92	2,363 C
EDN 105-95	35,766 C
EDN 204-123	20,251 C
EDN 305-136	3,126 C
EDN 306-145	5,349 C
UOH 215-168	19,636 C
UOH 324-170	1,523 C
LNR 802-3	6,970 C
LNR 101-1	51,801 C”

(37) By adding a new section to read as follows:

“SECTION 152.12. Any law to the contrary notwithstanding, the appropriations under Act 316, Session Laws of Hawaii 1989, section 222, as amended and renumbered by Act 299, Session Laws of Hawaii 1990, section 6, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
LNR 172-6	\$ 920 C
TRN 114-11	20,000,000 N
TRN 501-44	105 D
TRN 501-53B	483,604 C
TRN 501-53C	218,635 C
TRN 501-55	28,003 D
TRN 501-60A	9,135 C
TRN 511-62A	1,000,000 C
TRN 531-65	74,815 D
TRN 561-72	492 D
TRN 561-73	857,608 D
TRN 561-76	170,862 C
TRN 595-77	6,023 C
LNR 402-3	142 C
LNR 402-4	147 C
LNR 402-6	38 C
LNR 402-7	39 C
LNR 404-9	154,217 C
LNR 404-10	4,199 C
LNR 404-13	4,341 C
LNR 404-14	839,815 C
LNR 404-15	8,056 C
LNR 404-17	82,984 C
LNR 404-18	20,119 C
LNR 404-20	72,226 C
LNR 404-21	16,676 C
LNR 404-22	215 C
LNR 404-24	1,059 C
LNR 404-25	88 C
LNR 404-26	323 C
LNR 404-28	328 C
LNR 404-29	2,085 C
LNR 404-30	7,598 C
LNR 404-31	455 C
LNR 906-35	1,011 C
HTH 221-9A	146,218 C
HTH 223-10	13,195 C
HTH 232-11	10,585 C
HTH 242-12	10,292 C
HTH 430-14	13,210 C
EDN 105-1	1,205 B
EDN 105-2	17,244 B
EDN 105-4	15,779 B
EDN 105-6	5,000 B
EDN 105-11	10,794 B

<u>Item No.</u>	<u>Amount (MOF)</u>
EDN 105-21	800 B
EDN 105-52	1,884 B
EDN 105-55	8,113 B
EDN 105-58	2,000 B
EDN 105-61	11,635 B
EDN 105-68	100 B
EDN 105-73	4,000 B
EDN 105-78	11,457 B
EDN 105-83	291 B
EDN 105-101	1,510 B
EDN 203-109	17 B
EDN 203-110	151 B
EDN 203-112	4,000 B
EDN 204-114	7,840 B
EDN 303-123	12,319 B
EDN 305-130	1,431 B
EDN 407-136	17,052 C
EDN 407-136A	139,170 C
EDN 407-138	93,638 C
EDN 407-142A	770 C
UOH 105-155A	12,396 C
UOH 106-159	21,058 C
UOH 106-162	259,663 C
UOH 106-164	468,948 C
UOH 106-165	78,560 C
UOH 106-166A	118,398 C
UOH 501-171	21,172 C
UOH 906-175	10,000 C
UOH 906-176	20,966 C
CCA 701-1	194,214 C
LNR 804-3	11,144 C
LNR 804-4	257 C
LNR 806-9	7,724 C
LNR 806-10	49 C
LNR 806-11	27,291 C
LNR 806-15	133 C
LNR 806-17	27,731 C
AGS 889-33	26,853 C
AGS 889-34	117,242 C
LNR 809-38	3,705 C
LNR 810-6	676 C
LNR 810-7	14,829 C
LNR 810-8	393 C
GOV 103-6A	5,000 C
LNR 101-10	2,027 C
LNR 101-11	979 C
LNR 101-12	158,117 C
LNR 101-14	16,808 C
AGS 221-17A	267,423 C
AGS 221-19	22 C
AGS 221-22	41,948 C
AGS 221-27	86,914 C''

(38) By adding a new section to read as follows:

“SECTION 152.13. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and reimbursement under Act 316, Session Laws of Hawaii 1989, section 222, as amended and renumbered by Act 299, Session Laws of Hawaii 1990, section 6, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
TRN 102-1	\$38,405,042 E
TRN 102-2	129,870 E
TRN 102-4	298,700 E
TRN 102-4	500,000 N
TRN 102-7	4,279,869 E
TRN 102-7	600,000 N
TRN 111-9	145,800 E
TRN 131-12	17,338,810 E
TRN 131-12	150,000 N
TRN 131-13	25,000 E
TRN 131-14	22,750,000 E
TRN 131-14	10,100,000 N
TRN 161-18	5,069,730 E
TRN 161-18	2,514,265 N
TRN 161-20	3,720,000 E
TRN 161-20	2,100,000 N
TRN 195-21	600,000 N
TRN 195-23	4,753,593 E
TRN 195-23	200,000 N
TRN 511-61	657 D
TRN 561-70A	43,197 C
LNR 402-1	12,230 C
LNR 404-11	23,910 C
UOH 101-149	2,586,000 N
LNR 806-14	5,391 C
DEF 110-9	42,685 C”

(39) By adding a new section to read as follows:

“SECTION 152.14. Any law to the contrary notwithstanding, the appropriation under Act 316, Session Laws of Hawaii 1989, section 222, as amended and renumbered by Act 299, Session Laws of Hawaii 1990, section 6, as amended by Act 296, Session Laws of Hawaii 1991, sections 178 and 179, in the amount indicated or balance thereof, unallotted, encumbered and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
AGS 221-20	\$ 235,692 C”

(40) By adding a new section to read as follows:

“SECTION 152.15. Any law to the contrary notwithstanding, the appropriation under Act 300, Session Laws of Hawaii 1990, section 2, in the amount

indicated or balance thereof, unallotted, encumbered and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
HHL 602-23	\$ 13,000 A''

(41) By adding a new section to read as follows:

“SECTION 152.16. Any law to the contrary notwithstanding, the appropriations under Act 314, Session Laws of Hawaii 1989, section 2, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
TRN 501-17	\$ 76 D
TRN 501-18	44,917 D
TRN 531-26	1,957 D
TRN 541-28	30,396 D
EDN 105-3	1,151 C
EDN 105-74	2,000 C
EDN 105-75	1,000 C
EDN 105-150	1,000 C
EDN 105-182	8,937 C
EDN 203-203	14,382 C
EDN 204-215	1,337 C
EDN 305-237	7,392 C
UOH 906-252	2,679 C
LNR 806-6	19,405 C
AGS 221-7	524 C''

(42) By adding a new section to read as follows:

“SECTION 152.17. Any law to the contrary notwithstanding, the appropriation under Act 314, Session Laws of Hawaii 1989, section 2, as amended by Act 299, Session Laws of Hawaii 1990, section 240D, in the amount indicated or balance thereof, unallotted, encumbered and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
LNR 806-3	\$ 20,375 C''

(43) By adding a new section to read as follows:

“SECTION 152.18. Any law to the contrary notwithstanding, the appropriation under Act 314, Session Laws of Hawaii 1989, section 2, as amended by Act 296, Session Laws of Hawaii 1991, section 184, in the amount indicated or balance thereof, unallotted, encumbered and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
SUB 401-50	\$ 12,303 C''

(44) By adding a new section to read as follows:

“SECTION 152.19. Any law to the contrary notwithstanding, the appropriations under Act 216, Session Laws of Hawaii 1987, section 280, as amended and

renumbered by Act 390, Session Laws of Hawaii 1988, section 6, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
BED 102-2	\$ 952 C
AGR 121-8	914 C
AGR 192-16B	25,005 C
LNR 141-22	787 C
LNR 141-23	383 C
LNR 141-25	165 C
LNR 141-26	16,012 C
LNR 141-27	1,988 C
LNR 141-27A	5,504 C
LNR 141-30	5,896 C
LNR 141-32	2,379 C
LNR 141-33	843 C
TRN 102-6	200,000 N
TRN 511-66A	20,000 D
TRN 511-66B	263,618 D
TRN 595-87	41 D
LNR 402-2	400 C
LNR 402-7	214 C
LNR 404-12	1,766 C
LNR 404-16	26,117 C
HTH 215-6	500 C
HTH 224-8	924 C
HTH 242-15	9,060 C
EDN 105-1	653 C
EDN 105-3	6,837 C
EDN 105-4	38,274 C
EDN 105-6	1,000 C
EDN 105-27	280 C
EDN 105-37	91 C
EDN 105-40A	1,000 C
EDN 105-40B	500 C
EDN 105-44	9,026 C
EDN 105-45D	581 C
EDN 107-46	132,048 C
EDN 305-51A	1,040 C
EDN 407-52	414 C
EDN 407-53	171,484 C
EDN 407-53A	13,133 C
EDN 407-56	1 C
EDN 407-57	1,674 C
EDN 407-58A	600 C
UOH 101-60	77,201 C
UOH 101-62A	788,010 C
UOH 101-66	1,273 C
UOH 106-81	21,939 C
UOH 311-88	500 C
UOH 906-93	7,715 C
CCA 701-1A	7,963 C
LNR 804-4	61 C

<u>Item No.</u>	<u>Amount (MOF)</u>
LNR 804-8	837 C
LNR 806-9	42,540 C
LNR 806-11A	19,566 C
LNR 806-12	8,414 C
LNR 806-15	16,378 C
LNR 806-16	757 C
LNR 806-17	319 C
LNR 806-20	4,666 C
LNR 806-21	41,867 C
LNR 806-22	15,553 C
LNR 806-23	8,627 C
LNR 806-24	634 C
LNR 806-30	5,000 C
LNR 806-38	3,746 C
LNR 806-43	8,000 C
LNR 806-44	23,303 C
LNR 806-45	26,354 C
AGS 889-58	818 C
LNR 809-60	138 C
LNR 809-62	3,000 C
DOC 402-3	7,385 C
DOC 403-3B	100 C
DOC 405-3C	1,175 C
DOC 407-5	9,612 C
DOC 409-5A	1,291 C
DOC 409-5B	7,178 C
LNR 810-6B	480 C
AGS 221-7	17,893 C
AGS 221-8	59 C
AGS 221-8A	124 C
AGS 221-12	8,476 C
AGS 221-28A	24,619 C''

(45) By adding a new section to read as follows:

“SECTION 152.20. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and reimbursement under Act 216, Session Laws of Hawaii 1987, section 280, as amended and renumbered by Act 390, Session Laws of Hawaii 1988, section 6, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
BED 120-17A	\$ 235,751 C
BED 120-17A	500,000 N
LNR 141-31	185,000 C
LNR 141-35	221 C
TRN 102-1	10,048,108 E
TRN 102-1	500,000 N
TRN 102-2	663,277 E
TRN 102-2	1,500,000 N
TRN 102-3	1,800,000 E



<u>Item No.</u>	<u>Amount (MOF)</u>
TRN 102-3	145,650N
TRN 114-7	500,000N
TRN 131-10	1,757,784 B
TRN 131-10	11,012,400 E
TRN 131-10	1,260,878 N
TRN 131-12	370,000 E
TRN 161-14	200,000N
TRN 161-15	700,000 E
TRN 195-19	4,019,370 E
TRN 195-19	1,500,000N
TRN 501-38	1,397,000D
TRN 501-40	990,000D
TRN 501-41	529,000D
TRN 501-44	571,100D
TRN 501-46	41,000D
TRN 501-48	323,655D
TRN 501-51	41,000D
TRN 511-61	1,645,000D
TRN 511-62	1,246,749D
TRN 511-65	771,000D
TRN 531-68	206,460D
TRN 561-80	650,200D
TRN 561-83	511,000D
TRN 595-89	11,511D
LNR 402-9	2,080 C
TRN 801-48A	800,000N''

(46) By adding a new section to read as follows:

“SECTION 152.21. Any law to the contrary notwithstanding, the appropriations under Act 216, Session Laws of Hawaii 1987, section 280, as amended and renumbered by Act 390, Session Laws of Hawaii 1988, section 6, as amended by Act 316, Session Laws of Hawaii 1989, section 240, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
HTH 221-7	\$ 42,850 C
UOH 101-67	811,313 C
UOH 102-69	2,174 C
UOH 106-78	19,580 C''

(47) By adding a new section to read as follows:

“SECTION 152.22. Any law to the contrary notwithstanding, the appropriation which is denoted as necessary to qualify for federal aid financing under Act 216, Session Laws of Hawaii 1987, section 280, as amended and renumbered by Act 390, Session Laws of Hawaii 1988, section 6, as amended by Act 299, Session Laws of Hawaii 1990, section 240B, in the amount indicated or balance thereof, unallotted, encumbered and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
TRN 301-25A	\$ 34,160D''

(48) By adding a new section to read as follows:

“SECTION 152.23. Any law to the contrary notwithstanding, the appropriations under Act 217, Session Laws of Hawaii 1987, section 2, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
HTH 214-1	\$ 5,392 C
HTH 907-6	1,593 C
EDN 105-92	105 C
EDN 105-204	765 C
EDN 407-252	15 C
UOH 315-261	40 C”

(49) By adding a new section to read as follows:

“SECTION 152.24. Any law to the contrary notwithstanding, the appropriation under Act 217, Session Laws of Hawaii 1987, section 2, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
PED 120-4	\$ 247 C
LNR 141-7	38 C
LNR 141-8	646 C
LNR 810-1	21,495 C”

(50) By adding a new section to read as follows:

“SECTION 152.25. Any law to the contrary notwithstanding, the appropriation under Act 217, Session Laws of Hawaii 1987, section 2, as amended by Act 316, Session Laws of Hawaii 1989, section 243, in the amount indicated or balance thereof, unallotted, encumbered and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
TRN 501-14	\$ 14,845 D”

(51) By adding a new section to read as follows:

“SECTION 152.26. Any law to the contrary notwithstanding, the appropriations under Act 300, Session Laws of Hawaii 1985, section 136, as amended and renumbered by Act 345, Session Laws of Hawaii 1986, section 6, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
PED 102-1B	\$ 298 C
HHL 602-1	3,583 C
EDN 105-9	155 C
EDN 105-42	910 C
EDN 105-43	84 C”

(52) By adding a new section to read as follows:

“SECTION 152.27. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and reimbursement under Act 300, Session Laws of Hawaii 1985, section 136, as amended and renumbered by Act 345, Session Laws of Hawaii 1986, section 6, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
PED 120-10	\$ 50,776 C
PED 120-10	1,550,000 N
TRN 102-1	70,000 E
TRN 102-1	100,000 N
TRN 102-2	121,677 E
TRN 102-3	2,193,500 E
TRN 102-3	100,000 N
TRN 104-7	4,000,000 E
TRN 104-7	1,000,000 N
TRN 111-8	429,000 E
TRN 114-9	647 E
TRN 114-9	500,000 N
TRN 131-10	1,500,000 N
TRN 195-16	6,372,640 B
TRN 195-16	3,111,572 E
TRN 195-16	344,988 N
TRN 501-30	181,026 D
TRN 501-31	423,990 D
TRN 501-36	200,248 D
TRN 511-44	195,000 D
TRN 561-58	1,253,944 D
LNR 806-41	44,520 C
LNR 806-53	6,327 C
TRN 801-56	60,000 D
TRN 801-66A	50,000 C ”

(53) By adding a new section to read as follows:

“SECTION 152.28. Any law to the contrary notwithstanding, the appropriation under Act 300, Session Laws of Hawaii 1985, section 136, as amended and renumbered by Act 345, Session Laws of Hawaii 1986, section 6, as amended by Act 216, Session Laws of Hawaii 1987, section 289, in the amount indicated or balance thereof, unallotted, encumbered and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
EDN 407-57	\$ 9,117 C ”

(54) By adding a new section to read as follows:

“SECTION 152.29. Any law to the contrary notwithstanding, the appropriation under Act 347, Session Laws of Hawaii 1986, section 2, in the amount indicated or balance thereof, unallotted, encumbered and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
HTH 211-1	\$ 1,080 C ”

(55) By adding a new section to read as follows:

“SECTION 152.30. Any law to the contrary notwithstanding, the appropriations under Act 301, Session Laws of Hawaii 1983, section 80, as amended and renumbered by Act 285, Session Laws of Hawaii 1984, section 7, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
HHL 602-2	\$ 4,000 C
EDN 105-3	6,000 C
EDN 105-4	4,300 C
UOH 881-4A	5,795 C
LNR 806-17A	24,400 C
LNR 806-18	100,033 C”

(56) By adding a new section to read as follows:

“SECTION 152.31. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and reimbursement under Act 301, Session Laws of Hawaii 1983, section 80, as amended and renumbered by Act 285, Session Laws of Hawaii 1984, section 7, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
PED 120-8A	\$ 568 C
PED 120-8A	305,500 N
TRN 102-2	8,214,775 B
TRN 102-2	1,836,583 E
TRN 102-2	204,752 N
TRN 102-3	1,000,000 N
TRN 102-4	582,000 E
TRN 102-4	100,000 N
TRN 102-6	100,000 N
TRN 114-10	2,515,000 E
TRN 114-10	100,000 N
TRN 114-11	2,137,000 E
TRN 114-11	100,000 N
TRN 131-12	591,032 E
TRN 131-12	3,100,000 N
TRN 161-15	987,106 E
TRN 161-15	45 N
TRN 195-18	2,633,172 E
TRN 195-18	100,000 N
TRN 501-39	67,000 D
TRN 531-49	211,300 D
TRN 541-53	9 D
TRN 561-56	69,000 D”

(57) By adding a new section to read as follows:

“SECTION 152.32. Any law to the contrary notwithstanding, the appropriation under Act 287, Session Laws of Hawaii 1984, section 2, in the amount

indicated or balance thereof, unallotted, encumbered and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
III-E-2B	\$ 303 C''

(58) By adding a new section to read as follows:

“SECTION 152.33. Any law to the contrary notwithstanding, the appropriation under Act 283, Session Laws of Hawaii 1983, section 2, in the amount indicated or balance thereof, unallotted, encumbered and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
III-E-13A	\$ 6,786 C''

(59) By adding a new section to read as follows:

“SECTION 152.34. Any law to the contrary notwithstanding, the appropriations under Act 1, Session Laws of Hawaii 1981, First Special Session, section 92, as amended and renumbered by Act 264, Session Laws of Hawaii 1982, section 5, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
HHL 602-7	\$ 1,800,000 N
UOH 215-36A	3,500,000 N
AGS 221-10	641 C''

(60) By adding a new section to read as follows:

“SECTION 152.35. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and reimbursement under Act 1, Session Laws of Hawaii 1981, First Special Session, section 92, as amended and renumbered by Act 264, Session Laws of Hawaii 1982, section 5, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
PED 120-5	\$ 1,514,000 N
TRN 102-4	6,045,506 E
TRN 102-5	200,000 N
TRN 104-10A	1,500,000 N
TRN 114-13	332,698 E
TRN 161-17	61,602 E
TRN 161-17	2,400,000 N
TRN 195-19	363,300 E
TRN 195-19	200,000 N
TRN 303-30	74,100,000 N
TRN 511-48	373 D
TRN 561-54A	277,795 D
TRN 801-15	184,000 D
TRN 801-15	463,000 N''

(61) By adding a new section to read as follows:

“SECTION 152.36. Any law to the contrary notwithstanding, the appropriations under Act 214, Session Laws of Hawaii 1979, section 120, as amended and renumbered by Act 300, Session Laws of Hawaii 1980, section 7, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
TRN 102-3	\$ 3,500,000 N
TRN 131-17	1,624,700 N
HHL 611-26	150,000 N”

(62) By adding a new section to read as follows:

“SECTION 152.37. Any law to the contrary notwithstanding, the appropriations which are denoted as necessary to qualify for federal aid financing and reimbursement under Act 214, Session Laws of Hawaii 1979, section 120, as amended and renumbered by Act 300, Session Laws of Hawaii 1980, section 7, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
PED 120-18	\$ 1,000,000 N
TRN 114-11	1,500,000 N
TRN 131-18	750,000 N
TRN 141-22	1,000,000 N
TRN 161-26	1,095,133 N”

(63) By adding a new section to read as follows:

“SECTION 152.38. Any law to the contrary notwithstanding, the appropriations under Act 10, Session Laws of Hawaii 1977, First Special Session, section 86, as amended and renumbered by Act 243, Session Laws of Hawaii 1978, section 5, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
TRN 102-1	\$ 651,659 N
TRN 102-2	1,000,000 N
TRN 102-3	3,104,994 N
TRN 114-10	136,667 N
TRN 181-15	80,000 N
PED 103-2	60,000 N”

(64) By adding a new section to read as follows:

“SECTION 152.39. Any law to the contrary notwithstanding, the appropriations under Act 195, Session Laws of Hawaii 1975, section 88, as amended and renumbered by Act 226, Session Laws of Hawaii 1976, section 6, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
TRN 161-2	\$ 3,000,000 N
TRN 102-8	5,712,077 E "

(65) By adding a new section to read as follows:

"SECTION 152.40. Any law to the contrary notwithstanding, the appropriation under Act 195, Session Laws of Hawaii 1975, section 91, as amended by Act 226, Session Laws of Hawaii 1976, section 7, in the amount indicated or balance thereof, unallotted, encumbered and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
IV-N-95	\$ 2,953 C "

(66) By adding a new section to read as follows:

"SECTION 152.41. Any law to the contrary notwithstanding, the appropriations under Act 218, Session Laws of Hawaii 1973, section 72, as amended and renumbered by Act 218, Session Laws of Hawaii 1974, section 6, in the amounts indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
TRN 161-17	\$ 3,357 N
TRN 175-18	1,615,000 E "

(67) By adding a new section to read as follows:

"SECTION 152.42. Any law to the contrary notwithstanding, the appropriation under Act 197, Session Laws of Hawaii 1971, section 2, in the amount indicated or balance thereof, unallotted, encumbered and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
I-K-65	\$ 5,022 C "

SECTION 7. Part VI, Act 218, Session Laws of Hawaii 1995, is amended:

(1) By adding a new section to read as follows:

"SECTION 156.1. **HOSPITAL REVENUE BONDS.** The department of health is authorized to issue hospital revenue bonds for hospital capital improvements program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with the debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements program projects, and, if so determined by the department and approved by the governor, such additional principal amount as may be deemed necessary by the department to pay interest on such hospital revenue bonds during the estimated period of construction of the capital improvements program project for which such hospital revenue bonds are issued, to establish, maintain, or increase reserves for such hospital revenue bonds, and to pay all or any part of the expenses related to the issuance of such hospital revenue bonds. The aforementioned hospital

revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on such hospital revenue bonds, to the extent not paid from the proceeds of such hospital revenue bonds, shall be payable from and secured by the revenues derived from one or more public health facility and related facilities under the ownership of the State or operated and managed by the department, and from federal moneys received by the State or any department thereof which are available to pay principal of and/or interest on indebtedness of the State, or such part of any thereof as the department may determine, including other rates, rents, fees or charges currently or hereafter derived from or arising through the ownership, operation, and management of hospitals and related facilities and the furnishing and supplying of the services thereof. The expenses related to the issuance of such hospital revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the facility administration fund of the department."

SECTION 8. Part VII, Act 218, Session Laws of Hawaii 1995, is amended:

(1) By amending section 163 to read as follows:

"SECTION 163. No appropriation authorized in this Act for expenditure by a political subdivision of this state shall be considered to be a mandate[, under section 5 of article VIII of the Hawaii State Constitution, for a political subdivision to undertake new programs to increase the level of services under existing programs of that political subdivision.] to undertake new programs or to increase the level of services under existing programs of that political subdivision. If any appropriation authorized in this Act [falls] constitutes such a mandate within the provisions of section 5 of article VIII of the Hawaii State constitution, such authorization shall be void and, in the case of capital improvements program project appropriations designated to be financed from the general obligation bond fund, the total general obligation bonds authorized for such projects shall be correspondingly decreased."

(2) By amending section 171 to read as follows:

"SECTION 171. Any law or provision of this Act to the contrary notwithstanding, the appropriations made for capital improvements program projects authorized under this Act shall not lapse at the end of the fiscal biennium for which the appropriation is made; provided that all appropriations made to be expended in the fiscal biennium 1995-1997 which are [encumbered] unencumbered as of June 30, 1998, shall lapse as of that date; provided further that this lapsing date shall not apply to the appropriations for the projects described in section 99 of this Act which are denoted as necessary to qualify for federal aid financing and reimbursement and which appropriations in their entirety the legislature hereby determines are necessary to qualify for federal aid financing and reimbursement."

(3) By amending section 177 to read as follows:

"SECTION 177. In the event that authorized appropriations specified for capital improvements program projects listed in this Act or in any other act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the general obligation bond fund or the general fund, the governor may make supplemental allotments from the project adjustment fund appropriated in part II and described in part IV of this Act to supplement any currently authorized capital [investment] improvements program cost elements; provided that such supplemental allotments from the project adjustment fund shall



not be used to increase the scope of the project; [provided further that such supplemental allotments for this Act shall not exceed ten per cent of the total cost of the recipient project where such total cost does not exceed \$1,000,000; and such supplemental allotments for this Act shall not exceed five per cent of the total cost of the recipient project, where such total cost is \$1,000,000 or more;] and provided further that the governor shall submit a report to the legislature on all such supplemental allotments no later than twenty days prior to the convening of the 1996 and 1997 regular sessions.”

(4) By amending section 192 to read as follows:

“SECTION 192. Provided that for all federal funds received subsequent to the convening of the [1996 and 1997] 1995 and 1996 regular sessions, each department shall submit a report to the legislature detailing the receipt of such funds no later than ten days upon notification of the receipt of such funds; provided further that this report shall detail the amount of funds received, the anticipated duration of the funds being received, a brief narrative of the purposes for such funds, and a summary of any state matching requirements; provided further that the governor may allow for an increase in the federal fund ceiling for the department to accommodate the expenditure of such funds; and provided further that the governor shall submit to the legislature a summary of all such funds received no later than twenty days prior to the convening of the 1996 and 1997 regular sessions.”

(5) By adding a new section to read as follows:

“SECTION 194.1. Provided that the departments of health, education and human services and the office of youth services may create an interdepartmental decategorization program for the development of pilot projects to demonstrate more effective ways to deliver mental health, educational, and protective services to multi-problem, multi-service children and adolescents who are clients of more than one program or agency; provided that the departments of health, education, human services and the office of youth services may transfer funds into, and may expend funds from, decategorized service accounts established to meet individual needs of multi-problem and multi-service children and adolescents; provided further that these agencies shall submit a joint report to the legislature on the status of the pilot projects developed under this decategorization demonstration program no later than ten days prior to the convening of the 1997 regular session.”

SECTION 9. If any portion of this Act or its application to any person, entity or circumstance is held to be invalid for any reason, then it is hereby declared that the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be expended to fulfill the objectives of such appropriation to the extent possible.

SECTION 10. In the event manifest clerical, typographical or other mechanical errors are found in this Act, the governor is hereby authorized to correct such errors.

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.<sup>2</sup> Nothing in this Act shall

affect the validity or continuing effectiveness of any provisions of Act 218, Session Laws of Hawaii 1995, not repealed or modified by this Act.

SECTION 12. This Act shall take effect upon its approval.

(Approved June 19, 1996.)<sup>3</sup>

Notes

1. Item vetoed, replaced, and initialized "BJC".

2. Edited accordingly.

3. This Act was approved on June 19, 1996, which is after the approval date (June 18, 1996) of Act 288.

ACT 288

S.B. NO. 2993

A Bill for an Act Relating to Uniform Probate Code.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 560, Hawaii Revised Statutes, is amended by adding four new articles to be appropriately designated and to read as follows:

**"ARTICLE I  
GENERAL PROVISIONS, DEFINITIONS, AND PROBATE  
JURISDICTION OF COURT**

**PART 1. SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS**

**§560:1-101 Short title.** This chapter shall be known and may be cited as the Uniform Probate Code.

**§560:1-102 Purposes; rule of construction.** (a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this chapter are to:

- (1) Simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;
- (2) Discover and make effective the intent of a decedent in distribution of the decedent's property;
- (3) Promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to the decedent's successors;
- (4) Facilitate use and enforcement of certain trusts; and
- (5) Make uniform the law among the various jurisdictions.

**§560:1-103 Supplementary general principles of law applicable.** Unless displaced by the particular provisions of this chapter, the principles of law and equity supplement its provisions.

**§560:1-104 Severability.** If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

**§560:1-105 Construction against implied repeal.** This chapter is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

**§560:1-106 Effect of fraud and evasion.** Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this chapter or if fraud is used to avoid or circumvent the provisions or purposes of this chapter, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during the decedent's lifetime which affects the succession of the decedent's estate.

**§560:1-107 Evidence of death or status.** In addition to the rules of evidence, the following rules relating to a determination of death and status apply:

- (1) Death occurs when an individual has sustained either:
  - (A) Irreversible cessation of circulatory and respiratory functions; or
  - (B) Irreversible cessation of all functions of the entire brain, including the brain stem. A determination of death must be made in accordance with accepted medical standards;
- (2) A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent;
- (3) A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report;
- (4) In the absence of prima facie evidence of death under paragraph (2) or (3), the fact of death may be established by clear and convincing evidence, including circumstantial evidence;
- (5) An individual whose death is not established under the preceding paragraphs who is absent for a continuous period of five years, during which the individual has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. The individual's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier;
- (6) In the absence of evidence disputing the time of death stated on a document described in paragraph (2) or (3), a document described in paragraph (2) or (3) that states a time of death one hundred twenty hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by one hundred twenty hours.

**§560:1-108 Acts by holder of general power.** For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, to register a trust, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests (as objects, takers in default, or otherwise) are subject to the power.

## PART 2. DEFINITIONS

**§560:1-201 General definitions.** Subject to additional definitions contained in the subsequent articles that are applicable to specific articles, parts, or sections, and unless the context otherwise requires, in this chapter:

“Agent” includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another’s health care, and an individual authorized to make decisions for another under a natural death act.

“Application” means a written request to the registrar for an order of informal probate or appointment under part 3 of article III.

“Beneficiary”, as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a “beneficiary of a beneficiary designation”, refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a “beneficiary designated in a governing instrument”, includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, or a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

“Beneficiary designation” refers to a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death.

“Child” includes an individual entitled to take as a child under this chapter by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

“Claims”, in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

“Court” means the circuit court in this State having jurisdiction in matters relating to the affairs of decedents.

“Conservator” means a person who is appointed by a court to manage the estate of a protected person, including a guardian of the property.

“Descendant” of an individual means all of the individual’s descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this chapter.

“Devise”, when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

“Devisee” means a person designated in a will to receive a devise. For the purposes of article II, in the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

“Disability” means cause for a protective order as described in section 560:5-401.

“Distributee” means any person who has received property of a decedent from the decedent’s personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in the trustee’s hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this provision, “testamentary trustee” includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

“Estate” includes the property of the decedent, trust, or other person whose affairs are subject to this chapter as originally constituted and as it exists from time to time during administration.

“Exempt property” means that property of a decedent’s estate which is described in section 560:2-403.

“Fiduciary” includes a personal representative, guardian, conservator, and trustee.

“Foreign personal representative” means a personal representative appointed by another jurisdiction.

“Formal proceedings” means proceedings conducted before a judge with notice to interested persons.

“Governing instrument” means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

“Guardian” means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

“Heirs”, except as controlled by section 560:2-711, means persons, including the surviving spouse and the State, who are entitled under the statutes of intestate succession to the property of a decedent.

“Incapacitated person” means an individual described in section 560:5-101.

“Informal proceedings” means those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

“Interested person” includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

“Issue” of a person means descendant as defined in this section.

“Joint tenants with the right of survivorship” and “community property with the right of survivorship” includes tenancies by the entirety and co-ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party’s contribution.

“Lease” includes an oil, gas, or other mineral lease.

“Letters” includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship. Unless otherwise provided by order of the court or registrar, letters testamentary and letters of administration shall only be effective for three years unless renewed for good cause, and such limitation shall be stated on the face of the letters.

"Minor" means a person who is under eighteen years of age.

"Mortgage" means any conveyance, agreement, or arrangement in which property is encumbered or used as security.

"Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of decedent's death.

"Organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

"Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this chapter by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

"Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

"Person" means an individual or an organization.

"Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

"Petition" means a written request to the court for an order after notice.

"Proceeding" includes action at law and suit in equity.

"Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

"Protected person" is as defined in section 560:5-101.

"Protective proceeding" means a proceeding described in section 560:5-101.

"Registrar" refers to the official of the court designated to perform the functions of registrar as provided in section 560:1-307.

"Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

"Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

"Special administrator" means a personal representative as described by sections 560:3-614 through 560:3-618.

"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

"Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

"Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this chapter.

"Supervised administration" refers to the proceedings described in article III, part 5.

"Survive" means that an individual has neither predeceased an event, including the death of another individual, nor is deemed to have predeceased an event under section 560:2-104 or 560:2-702. The term includes its derivatives, such as "survives", "survived", "survivor", "surviving".

“Testacy proceeding” means a proceeding to establish a will or determine intestacy.

“Testator” includes an individual of either sex.

“Trust” includes an express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts and excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in article VI, custodial arrangements pursuant to chapters 553A and 554B, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

“Trustee” includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

“Ward” means an individual described in section 560:5-101.

“Will” includes codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

### PART 3. SCOPE, JURISDICTION, AND COURTS

**§560:1-301 Territorial application.** Except as otherwise provided in this chapter, this chapter applies to:

- (1) The affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this State;
- (2) The property of nonresidents located in this State or property coming into the control of a fiduciary who is subject to the laws of this State;
- (3) Incapacitated persons and minors in this State;
- (4) Survivorship and related accounts in this State; and
- (5) Trusts subject to administration in this State.

**§560:1-302 Subject matter jurisdiction.** (a) To the full extent permitted by the constitution and except as otherwise provided by law, the court has jurisdiction over all subject matter relating to:

- (1) Estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons;
- (2) Protection of minors and incapacitated persons; and
- (3) Trusts.

(b) The court has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

(c) The court has jurisdiction over protective proceedings and the family court has jurisdiction over guardianship proceedings.

(d) Where protective and guardianship proceedings relating to the same person have been initiated, they may be consolidated in the court or in the family court as the court and the family court in the exercise of their discretion shall determine.

**§560:1-303 Venue; multiple proceedings; transfer.** (a) Where a proceeding under this chapter could be maintained in more than one place in this State, the court in which the proceeding is first commenced has the exclusive right to proceed.

(b) If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of this State, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

(c) If a court finds that in the interest of justice a proceeding or a file should be located in another court of this State, the court making the finding may transfer the proceeding or file to the other court.

**§560:1-304 Practice in court.** Unless specifically provided to the contrary in this chapter or unless inconsistent with its provisions, the Hawai'i probate rules govern formal and informal proceedings under this chapter.

**§560:1-305 Records and certified copies.** The clerk of court shall keep a record for each decedent, ward, protected person, or trust involved in any document which may be filed with the court under this chapter, including petitions and applications, demands for notices or bonds, trust registrations, and of any orders or responses relating thereto by the registrar or court, and establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law the clerk shall issue certified copies of any probated wills, letters issued to personal representatives, or any other record or paper filed or recorded. Certificates relating to probated wills shall indicate whether the decedent was domiciled in this State and whether the probate was formal or informal. Certificates relating to letters shall show the date of appointment.

**§560:1-306 Jury trial.** (a) If duly demanded, a party is entitled to trial by jury in a formal testacy proceeding and any proceeding in which any controverted question of fact arises as to which any party has a constitutional right to trial by jury.

(b) If there is no right to trial by jury under subsection (a) or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only.

**§560:1-307 Registrar; powers.** The acts and orders which this chapter specifies as performable by the registrar may be performed either by a judge of the court or by a person, including the clerk, designated by the court by a written order filed and recorded in the office of the court.

**§560:1-308 Appeals.** Appellate review, including the right to appellate review, interlocutory appeal, provisions as to time, manner, notice, appeal bond, stays, scope of review, record on appeal, briefs, arguments and power of the appellate court, is governed by the Hawai'i rules of appellate procedure and the Hawai'i rules of civil procedure.

**§560:1-309 Reserved.**

**§560:1-310 Oath or affirmation on filed documents.** Except as otherwise specifically provided in this chapter or by rule, every document filed with the court under this chapter including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and penalties for perjury may follow deliberate falsification therein.



## PART 4. NOTICE, PARTIES, AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS

**§560:1-401 Notice; method and time of giving.** (a) If notice of a hearing on any petition is required and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing of any petition to be given to any interested person or the person's attorney if the person has appeared by attorney or requested that notice be sent to the person's attorney, or, in the case of a minor or an incapacitated person, the minor's or incapacitated person's parent or guardian, as appropriate. Notice shall be given:

- (1) By mailing a copy thereof at least fourteen days before the time set for the hearing by certified, registered, or ordinary first class mail addressed to the person being notified at the post office address given in the person's demand for notice, if any, or at the person's office or place of residence, if known;
- (2) By delivering a copy thereof to the person being notified personally at least fourteen days before the time set for the hearing; or
- (3) If the address or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing at least once a week for three consecutive weeks, a copy thereof in a newspaper having general circulation in the judicial circuit where the hearing is to be held, the last publication of which is to be at least ten days before the time set for the hearing.

(b) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(c) Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

**§560:1-402 Notice; waiver.** A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. A person for whom a guardianship or other protective order is sought, a ward, or a protected person may not waive notice.

**§560:1-403 Pleadings; when parties bound by others; notice.** In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:

- (1) Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner;
- (2) Persons are bound by orders binding others in the following cases:
  - (A) Orders binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power;
  - (B) To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate the conservator controls; orders binding a guardian bind the ward if no conservator of the ward's estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the

undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent the parent's minor child; and

- (C) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding;
- (3) Notice is required as follows:
  - (A) Notice as prescribed by section 560:1-401 shall be given to every interested person or to one who can bind an interested person as described in paragraph (2)(A) or (2)(B). Notice may be given both to a person and to another who may bind the person;
  - (B) Notice is given to unborn or unascertained persons, who are not represented under paragraph (2)(A) or (2)(B), by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons;
- (4) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

## ARTICLE II INTESTATE SUCCESSION AND WILLS

### PART 1. INTESTATE SUCCESSION

**§560:2-101 Intestate estate.** (a) Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this chapter, except as modified by the decedent's will.

(b) A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed the intestate share.

**§560:2-102 Share of spouse.** The intestate share of a decedent's surviving spouse is:

- (1) The entire intestate estate if:
  - (A) No descendant or parent of the decedent survives the decedent; or
  - (B) All of the decedent's surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;
- (2) The first \$200,000, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent;
- (3) The first \$150,000, plus one-half of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of

the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent; or

- (4) The first \$100,000, plus one-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse.

**§560:2-103 Share of heirs other than surviving spouse.** Any part of the intestate estate not passing to the decedent's surviving spouse under section 560:2-102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated below who survive the decedent:

- (1) To the decedent's descendants by representation;
- (2) If there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent;
- (3) If there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation; and
- (4) If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other half passes to the decedent's maternal relatives in the same manner; but if there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half.

**§560:2-104 Requirement that heir survive decedent for one hundred twenty hours.** An individual who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by one hundred twenty hours, it is deemed that the individual failed to survive for the required period. This section is not to be applied if its application would result in a taking of intestate estate by the State under section 560:2-105.

**§560:2-105 No taker.** If there is no taker under the provisions of this article, the intestate estate passes to the State.

**§560:2-105.5 Escheat of kuleana lands.** Any provision of law to the contrary notwithstanding, if the owner of an inheritable interest in kuleana land dies intestate, or dies partially intestate and that partial intestacy includes the decedent's interest in the kuleana land, and if there is no taker under article II, such inheritable interest shall pass to the department of land and natural resources to be held in trust until the office of Hawaiian affairs develops a land management plan for the use and management of such kuleana properties, and such plan is approved by the department of land and natural resources. Upon approval, the department of land and natural resources shall transfer such kuleana properties to the office of Hawaiian affairs. For the purposes of this section, "kuleana lands" means those lands granted to native tenants pursuant to L. 1850, p. 202, entitled "An Act Confirming Certain Resolutions of the King and Privy Council Passed on the 21st Day of December, A.D. 1849, Granting to the Common People Allodial Titles for Their Own Lands

and House Lots, and Certain Other Privileges", as originally enacted and as amended.

**§560:2-106 Representation.** (a) Definitions. In this section:

"Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is deemed to have predeceased the decedent under section 560:2-104.

"Surviving descendant" means a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent under section 560:2-104.

(b) Decedent's descendants. If, under section 560:2-103(1), a decedent's intestate estate or a part thereof passes "by representation" to the decedent's descendants, the estate or part thereof is divided into as many equal shares as there are:

- (1) Surviving descendants in the generation nearest to the decedent which contains one or more surviving descendants; and
- (2) Deceased descendants in the same generation who left surviving descendants, if any.

Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

(c) Descendants of parents or grandparents. If, under section 560:2-103(3) or (4), a decedent's intestate estate or a part thereof passes "by representation" to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part thereof is divided into as many equal shares as there are:

- (1) Surviving descendants in the generation nearest the deceased parents or either of them, or the deceased grandparents or either of them, that contains one or more surviving descendants; and
- (2) Deceased descendants in the same generation who left surviving descendants, if any.

Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

**§560:2-107 Kindred of half blood.** Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

**§560:2-108 Afterborn heirs.** An individual in gestation at a particular time is treated as living at that time if the individual lives one hundred twenty hours or more after birth.

**§560:2-109 Advancements.** (a) If an individual dies intestate as to all or a portion of the individual's estate, property the decedent gave during the decedent's lifetime to an individual who, at the decedent's death, is an heir is treated as an advancement against the heir's intestate share only if:

- (1) The decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement; or
- (2) The decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in

computing the division and distribution of the decedent's intestate estate.

(b) For purposes of subsection (a), property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent's death, whichever first occurs.

(c) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent's intestate estate, unless the decedent's contemporaneous writing provides otherwise.

**§560:2-110 Debts to decedent.** A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

**§560:2-111 Alienage.** No individual is disqualified to take as an heir because the individual or an individual through whom the individual claims is or has been an alien.

**§560:2-112 Dower and curtesy abolished.** The estates of dower and curtesy are abolished.

**§560:2-113 Individuals related to decedent through two lines.** An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

**§560:2-114 Parent and child relationship.** (a) Except as provided in subsections (b) and (c), for purposes of intestate succession by, through, or from a person, an individual is the child of the child's natural parents, regardless of their marital status. The parent and child relationship may be established under chapter 584.

(b) An adopted individual is the child of the child's adopting parent or parents and not of the child's natural parents, except that:

- (1) Adoption of a child by the spouse of either natural parent has no effect on:
  - (A) The relationship between the child and that natural parent; or
  - (B) The right of the child or a descendant of the child to inherit from or through the other natural parent;

and

- (2) Adoption of a child during such child's minority by the spouse of a natural parent of the child, by a natural grandparent, aunt, uncle, or sibling of the child or the spouse of a natural grandparent, aunt, uncle, or sibling of the child has no effect on the relationship between the child and either natural parent, for the limited purpose of interpretation or construction of a disposition in any will, trust, or other lifetime instrument, whether executed before or after the order of adoption, and for the purposes of determining the heirs at law of a natural family member of the child.

(c) Inheritance from or through a child by either natural parent or the parent's kindred is precluded unless that natural parent has openly treated the child as the natural parent's, and has not refused to support the child.

(d) For the purposes of this section, if a person has been adopted more than once, the term "natural parent" includes an adopting parent by an earlier adoption.

## PART 2. ELECTIVE SHARE OF SURVIVING SPOUSE

### **§560:2-201 Definitions.** In this part:

As used in sections other than section 560:2-205, “decedent’s nonprobate transfers to others” means the amounts that are included in the augmented estate under section 560:2-205.

“Fractional interest in property held in joint tenancy with the right of survivorship”, whether the fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

“Marriage”, as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent’s surviving spouse.

“Nonadverse party” means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that the person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is deemed to have a beneficial interest in the property.

“Power” or “power of appointment” includes a power to designate the beneficiary of a beneficiary designation.

“Presently exercisable general power of appointment” means a power of appointment under which, at the time in question, the decedent, whether or not the decedent then had the capacity to exercise the power, held a power to create a present or future interest in the decedent’s self, the decedent’s creditors, the decedent’s estate, or creditors of the decedent’s estate, and includes a power to revoke or invade the principal of a trust or other property arrangement.

“Probate estate” means property that would pass by intestate succession if the decedent died without a valid will.

“Property” includes values subject to a beneficiary designation.

“Right to income” includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement.

“Transfer”, as it relates to a transfer by or of the decedent, includes:

- (1) An exercise or release of a presently exercisable general power of appointment held by the decedent;
- (2) A lapse at death of a presently exercisable general power of appointment held by the decedent; and
- (3) An exercise, release, or lapse of a general power of appointment that the decedent created in the decedent’s self of a power described in section 560:2-205(2)(B) that the decedent conferred on a nonadverse party.

**§560:2-202 Elective share.** (a) Elective-share amount. The surviving spouse of a decedent who dies domiciled in this State has a right of election, under the limitations and conditions stated in this part, to take an elective-share amount equal to the value of the elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, in accordance with the following schedule:

If the decedent and the spouse were married to each other:

The elective-share percentage is:

Less than 1 year

Supplemental amount only.

1 year but less than 2 years	3% of the augmented estate.
2 years but less than 3 years	6% of the augmented estate.
3 years but less than 4 years	9% of the augmented estate.
4 years but less than 5 years	12% of the augmented estate.
5 years but less than 6 years	15% of the augmented estate.
6 years but less than 7 years	18% of the augmented estate.
7 years but less than 8 years	21% of the augmented estate.
8 years but less than 9 years	24% of the augmented estate.
9 years but less than 10 years	27% of the augmented estate.
10 years but less than 11 years	30% of the augmented estate.
11 years but less than 12 years	34% of the augmented estate.
12 years but less than 13 years	38% of the augmented estate.
13 years but less than 14 years	42% of the augmented estate.
14 years but less than 15 years	46% of the augmented estate.
15 years or more	50% of the augmented estate;

provided, however, the surviving spouse may elect to take a share smaller than that to which the surviving spouse is entitled hereunder.

(b) Supplemental elective-share amount. If the sum of the amounts described in sections 560:2-207, 560:2-209(a)(1), and that part of the elective-share amount payable from the decedent's probate estate and nonprobate transfers to others under section 560:2-209(b) and (c) is less than \$50,000, the surviving spouse is entitled to a supplemental elective-share amount equal to \$50,000 minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in section 560:2-209(b) and (c).

(c) Effect of election on statutory benefits. If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

(d) Non-domiciliary. The right, if any, of the surviving spouse of a decedent who dies domiciled outside this State to take an elective share in property in this State is governed by the law of the decedent's domicile at death.

**§560:2-203 Composition of the augmented estate.** Subject to section 560:2-208, the value of the augmented estate, to the extent provided in sections 560:2-204, 560:2-205, 560:2-206, and 560:2-207, consists of the sum of the values of all property, whether real or personal; movable or immovable, tangible or intangible, wherever situated, that constitute the decedent's net probate estate, the decedent's nonprobate transfers to others, the decedent's nonprobate transfers to the surviving spouse, and the surviving spouse's property and nonprobate transfers to others.

**§560:2-204 Decedent's net probate estate.** The value of the augmented estate includes the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance, family allowances, exempt property, and enforceable claims.

**§560:2-205 Decedent's nonprobate transfers to others.** The value of the augmented estate includes the value of the decedent's nonprobate transfers to others, not included under section 560:2-204, of any of the following types, in the amount provided respectively for each type of transfer:

- (1) Property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent's death. Probate included under this category consists of:
  - (A) Property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment. The amount included is the value of the property subject to the power, to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse;
  - (B) The decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship. The amount included is the value of the decedent's fractional interest, to the extent the fractional interest passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse;
  - (C) The decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship. The amount included is the value of the decedent's ownership interest, to the extent the decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse; and
  - (D) Proceeds of insurance, including accidental death benefits, on the life of the decedent, if the decedent owned the insurance policy immediately before death or if and to the extent the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds. The amount included is the value of the proceeds, to the extent they were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse;
- (2) Property transferred in any of the following forms by the decedent during marriage:
  - (A) Any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent the decedent's right terminated at or continued beyond the decedent's death. The amount included is the value of the fraction of the property to which the decedent's right related, to the extent the fraction of the property passed outside probate to or for the benefit of any person other than the decedent's estate or surviving spouse;
  - (B) Any transfer in which the decedent created a power over income or property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's estate, or creditors of the decedent's estate. The amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is the value of the property that produces or produced the income, to the extent the power in either case was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than the decedent's estate or



surviving spouse. If the power is a power over both income and property and the preceding sentence produces different amounts, the amount included is the greater amount;

- (3) Property that passed during marriage and during the two-year period next preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:
  - (A) Any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under paragraph (1)(A), (B), or (C), or under paragraph (2), if the right, interest, or power had not terminated until the decedent's death. The amount included is the value of the property that would have been included under those paragraphs if the property were valued at the time the right, interest, or power terminated, and is included only to the extent the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse. As used in this subparagraph, "termination", with respect to a right or interest in property, occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred or relinquished the right or interest, and, with respect to a power over property, occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred or relinquished the right or interest, and, with respect to a power over property, occurs when the power terminated by exercise, release, lapse, default, or otherwise, but, with respect to a power described in paragraph (1)(A), "termination" occurs when the power terminated by exercise or release, but not otherwise;
  - (B) Any transfer of or relating to an insurance policy on the life of the decedent if the proceeds would have been included in the augmented estate under paragraph (1)(D) had the transfer not occurred. The amount included is the value of the insurance proceeds to the extent the proceeds were payable at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse;
  - (C) Any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse. The amount included is the value of the transferred property to the extent the aggregate transfers to any one donee in either of the two years exceeded \$20,000.

**§560:2-206 Decedent's nonprobate transfers to the surviving spouse.**

Excluding property passing to the surviving spouse under the federal social security system, the value of the augmented estate includes the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which consist of all property that passed outside probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death, including:

- (1) The decedent's fractional interest in property held as a joint tenant with the right of survivorship, to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;
- (2) The decedent's ownership interest in property or accounts held in co-ownership registration with the right of survivorship, to the extent the

decedent's ownership interest passed to the surviving spouse as surviving co-owner; and

- (3) All other property that would have been included in the augmented estate under section 560:2-205(1) or (2) had it passed to or for the benefit of a person other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate or estate creditors.

**§560:2-207 Surviving spouse's property and nonprobate transfers to others.** (a) Included property. Except to the extent included in the augmented estate under section 560:2-204 or 560:2-206, the value of the augmented estate includes the value of:

- (1) Property that was owned by the decedent's surviving spouse at the decedent's death, including:
  - (A) The surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship;
  - (B) The surviving spouse's ownership interest in property or accounts held in co-ownership registration with the right of survivorship; and
  - (C) Property that passed to the surviving spouse by reason of the decedent's death, but not including the spouse's right to homestead allowance, family allowance, exempt property, or payments under the federal social security system;
 and
- (2) Property that would have been included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interest included under subsection (a)(1)(A) or (B), had the spouse been the decedent.

(b) Time of valuation. Property included under this section is valued at the decedent's death, taking the fact that the decedent predeceased the spouse into account, but, for purposes of subsection (a)(1)(A) and (B), the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts. For purposes of subsection (a)(2), proceeds of insurance that would have been included in the spouse's nonprobate transfers to others under section 560:2-205(1)(D) are not valued as if the spouse were deceased.

(c) Reduction for enforceable claims. The value of property included under this section is reduced by enforceable claims against the surviving spouse.

**§560:2-208 Exclusions, valuation, and overlapping application.** (a) Exclusions:

- (1) The value of any property is excluded from the decedent's nonprobate transfers to others:
  - (A) To the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the property; or
  - (B) If the property was transferred with the written joinder of, or if the transfer was consented to in writing by, the surviving spouse.
- (2) The augmented estate shall not include the value of any property that either:
  - (A) Is held in a trust created and funded by any party other than the decedent or the surviving spouse; or
  - (B) Was received by either spouse during marriage by gift, devise, inheritance or distribution from a trust created and funded by any party other than the decedent or the surviving spouse, provided

that such property was kept segregated from property includible in the augmented estate.

(b) Valuation. The value of property:

- (1) Included in the augmented estate under section 560:2-205, 560:2-206, or 560:2-207 is reduced in each category by enforceable claims against the included property; and
- (2) Includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.

(c) Overlapping application; no double inclusion. In case of overlapping application to the same property of the paragraphs or subparagraphs of section 560:2-205, 560:2-206, or 560:2-207, the property is included in the augmented estate under the provision yielding the greatest value, and under only one overlapping provision if they all yield the same value.

**§560:2-209 Sources from which elective share payable.** (a) In a proceeding for an elective share, the following are applied first to satisfy the elective-share amount and to reduce or eliminate any contributions due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others:

- (1) Amounts included in the augmented estate under section 560:2-204 which pass or have passed to the surviving spouse by testate or intestate succession and amounts included in the augmented estate under section 560:2-206; and
- (2) Amounts included in the augmented estate under section 560:2-207 up to the applicable percentage thereof. For the purposes of this subsection, the "applicable percentage" is twice the elective-share percentage set forth in the schedule in section 560:2-202(a) appropriate to the length of time the spouse and the decedent were married to each other.

(b) If, after the application of subsection (a), the elective-share amount is not fully satisfied or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's probate estate and in the decedent's nonprobate transfers to others, other than amounts included under section 560:2-205(3)(A) or (C), are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that portion of the decedent's nonprobate transfers to others are so applied that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is equitably apportioned among the recipients of the decedent's probate estate and of that portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

(c) If, after the application of subsections (a) and (b), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's nonprobate transfers to others is so applied that liability for the unsatisfied balance of the elective-share or supplemental elective-share amount is equitably apportioned among the recipients of the remaining portion of the decedent's nonprobate transfers to others in proportion to the value of their interests therein.

**§560:2-210 Personal liability of recipients.** (a) Only original recipients of the decedent's nonprobate transfers to others, and the donees of the recipients of the decedent's nonprobate transfers to others, to the extent the donees have the property or its proceeds, are liable to make a proportional contribution toward satisfaction of the surviving spouse's elective-share or supplemental elective-share amount. A

person liable to make contribution may choose to give up the proportional part of the decedent's nonprobate transfers to the person or to pay the value of the amount for which he or she is liable.

(b) If any section or part of any section of this part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's nonprobate transfers to others, a person who, not for value, receives the payment, item of property, or any other benefit is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of that item of property or benefit, as provided in section 560:2-209, to the person who would have been entitled to it were that section or part of that section not preempted.

**§560:2-211 Proceeding for elective share; time limit.** (a) Except as provided in subsection (b), the election must be made by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within nine months after the date of the decedent's death, or within six months after the probate of the decedent's will, whichever limitation later expires. Except as provided in subsection (b), the decedent's nonprobate transfers to others are not included within the augmented estate for the purpose of computing the elective-share, if the petition is filed more than nine months after the decedent's death.

(b) Within nine months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within nine months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's nonprobate transfers to others, the court for cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's nonprobate transfers to others are not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts, if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.

(c) The surviving spouse must give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share.

(d) The surviving spouse may withdraw the spouse's demand for an elective share at any time before entry of a final determination by the court.

(e) After notice and hearing, the court shall determine the elective-share and supplemental elective-share amounts, and shall order its payment from the assets of the augmented estate or by contribution as appears appropriate under sections 560:2-209 and 560:2-210. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than the person would have been under sections 560:2-209 and 560:2-210 had relief been secured against all persons subject to contribution.

(f) An order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this State or other jurisdictions.

**§560:2-212 Right of election personal to surviving spouse; incapacitated surviving spouse.** (a) Surviving spouse must be living at time of election. The right of election may be exercised only by a surviving spouse who is living when the

petition for the elective share is filed in the court under section 560:2-211(a). If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by the spouse's conservator, guardian, or agent under the authority of a power of attorney.

(b) Incapacitated surviving spouse. If the election is exercised on behalf of a surviving spouse who is an incapacitated person, that portion of the elective-share and supplemental elective-share amounts due from the decedent's probate estate and recipients of the decedent's nonprobate transfers to others under section 560:2-209(b) and (c) must be placed in a custodial trust for the benefit of the surviving spouse under chapter 554B, except as modified below. For the purposes of this subsection, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. For purposes of the custodial trust established by this subsection:

- (1) The electing guardian, conservator, or agent is the custodial trustee;
- (2) The surviving spouse is the beneficiary; and
- (3) The custodial trust is deemed to have been created by the decedent spouse by written transfer that takes effect at the decedent spouse's death and that directs the custodial trustee to administer the custodial trust as one created for the benefit of an incapacitated beneficiary.

(c) Custodial trust. For purposes of subsection (b), chapter 554B must be applied as if section 554B-6(b) thereof were repealed and sections 554B-2(e), 554B-9(b), and 554B-17(a) were amended to read as follows:

- (1) Neither an incapacitated beneficiary nor anyone acting on behalf of an incapacitated beneficiary has a power to terminate the custodial trust; but if the beneficiary regains capacity, the beneficiary then acquires the power to terminate the custodial trust by delivering to the custodial trustee a writing signed by the beneficiary declaring the termination. If not previously terminated, the custodial trust terminates on the death of the beneficiary;
- (2) If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of the custodial trust property as the custodial trustee considers advisable for the health, education, maintenance and support of the beneficiary and individuals who are legally entitled to support by the beneficiary. Expenditures may be made in the manner, when, and to the extent that the custodial trustee determines suitable and proper, without court order but with regard to other support, income, and property of the beneficiary and benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the beneficiary must qualify on the basis of need; provided that the custodial trustee shall not make any distributions of the principal of the custodial trust unless the custodial trustee determines, in the trustee's discretion, that the remaining assets of the surviving spouse cannot or should not be first used instead for the spouse's benefit. The custodial trustee may make such a determination when, for example, the sole remaining asset of the surviving spouse is the spouse's residence, or similar factors would exist that would make use or liquidation of the surviving spouse's own assets inappropriate;
- (3) Upon the beneficiary's death, the custodial trustee shall transfer the unexpended custodial trust property in the following order:
  - (A) Under the residuary clause, if any, of the will of the beneficiary's predeceased spouse against whom the elective share was taken, as if that predeceased spouse died immediately after the beneficiary; or

(B) To that predeceased spouse's heirs under section 560:2-711.

**§560:2-213 Waiver of right to elect and of other rights.** (a) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse.

(b) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

- (1) The surviving spouse did not execute the waiver voluntarily; or
- (2) The waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse:
  - (A) Was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;
  - (B) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and
  - (C) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

(c) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(d) Unless it provides to the contrary, a waiver of "all rights", or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights of elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to the spouse from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

**§560:2-214 Protection of payors and other third parties.** (a) Although under section 560:2-205 a payment, item of property, or other benefit is included in the decedent's nonprobate transfers to others, a payor or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is liable for payments made or other actions taken after the payor or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed.

(b) A written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction or probate proceedings relating

to decedents' estates located in the judicial circuit of the decedent's residence. The court shall hold the funds or item of property, and, upon its determination under section 560:2-211(d), shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under section 560:2-211(a) or, if filed, the demand for an elective share is withdrawn under section 560:2-211(d), the court shall order disbursement to the designated beneficiary. Payments or transfers to the court or deposits made into court discharge the payor or other third party from all claims for amounts so paid or the value of property so transferred or deposited.

(c) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this part.

### PART 3. SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

**§560:2-301 Entitlement of spouse; premarital will.** (a) If a testator's surviving spouse married the testator after the testator executed the testator's will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate the spouse would have received if the testator had died intestate as to that portion of the testator's estate, if any, that neither is devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor is devised to a descendant of such a child or passes under section 560:2-603 or 560:2-604 to such a child or to a descendant of such a child, unless:

- (1) It appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;
- (2) The will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or
- (3) The testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

(b) In satisfying the share provided by this section, devises made by the will to the testator's surviving spouse, if any, are applied first, and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under section 560:2-603 or 560:2-604 to a descendant of such a child, abate as provided in section 560:3-902.

**§560:2-302 Omitted children.** (a) Except as provided in subsection (b), if a testator fails to provide in the testator's will for any of the testator's children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:

- (1) If the testator had no child living when the testator executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will;
- (2) If the testator had one or more children living when the testator executed the will, and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

- (A) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will;
  - (B) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subparagraph (A), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child;
  - (C) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will;
  - (D) In satisfying a share provided by this paragraph, devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.
- (b) Neither subsection (a)(1) nor subsection (a)(2) applies if:
- (1) It appears from the will that the omission was intentional; or
  - (2) The testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.
- (c) If at the time of execution of the will the testator fails to provide in the testator's will for a living child solely because the testator believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.
- (d) In satisfying a share provided by subsection (a)(1), devises made by the will abate under section 560:3-902.

#### PART 4. EXEMPT PROPERTY AND ALLOWANCES

**§560:2-401 Applicable law.** This part applies to the estate of a decedent who dies domiciled in this State. Rights to homestead allowance, exempt property, and family allowance for a decedent who dies not domiciled in this State are governed by the law of the decedent's domicile at death.

**§560:2-402 Homestead allowance.** A decedent's surviving spouse is entitled to a homestead allowance of \$15,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to \$15,000 divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent, unless otherwise provided, by intestate succession, or by way of elective share.

**§560:2-403 Exempt property.** In addition to the homestead allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding \$10,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's children are entitled jointly to the same value. If encumbered chattels are selected and the value in excess of security interests, plus that of other exempt



property, is less than \$10,000 or if there is not \$10,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the \$10,000 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by way of elective share.

**§560:2-404 Family allowance.** (a) In addition to the right to homestead allowance and exempt property, the decedent's surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody. If a minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or the child's guardian or other person having the child's care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims except the homestead allowance.

(b) The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent, unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates the right to allowances not yet paid.

**§560:2-405 Source, determination, and documentation.** (a) If the estate is otherwise sufficient, property specifically devised may not be used to satisfy rights to homestead allowance or exempt property. Subject to this restriction, the surviving spouse, guardians of minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make those selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or there is no guardian of a minor child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. The personal representative may determine the family allowance in a lump sum not exceeding \$18,000 or periodic installments not exceeding \$1,500 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or an interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which may include a family allowance other than that which the personal representative determined or could have determined.

(b) If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated person, the personal representative may add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to the trust established under section 560:2-212(b).

## PART 5. WILLS, WILL CONTRACTS, AND CUSTODY AND DEPOSIT OF WILLS

**§560:2-501 Who may make will.** An individual eighteen or more years of age who is of sound mind may make a will.

**§560:2-502 Execution; witnessed wills; holographic wills.** (a) Except as provided in subsection (b) and in sections 560:2-503, 560:2-506, and 560:2-513, a will must be:

- (1) In writing;
- (2) Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and
- (3) Signed by at least two individuals, each of whom signed within a reasonable time after the individual witnessed either the signing of the will as described in paragraph (2) or the testator's acknowledgment of that signature or acknowledgment of the will.

(b) A will that does not comply with subsection (a) is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

(c) Intent that the document constitute the testator's will can be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting.

**§560:2-503 Writings intended as wills, etc.** Although a document or writing added upon a document was not executed in compliance with section 560:2-502, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute:

- (1) The decedent's will;
- (2) A partial or complete revocation of the will;
- (3) An addition to or an alteration of the will; or
- (4) A partial or complete revival of the decedent's formerly revoked will or of a formerly revoked portion of the will.

**§560:2-504 Self-proved will.** (a) A will may be simultaneously executed, attested, and made self-proved, by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, \_\_\_\_\_, the testator, sign my name to this instrument this \_\_\_\_ day of \_\_\_\_\_, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Testator

We, \_\_\_\_\_, \_\_\_\_\_, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and

executes this instrument as the testator's will and that the testator signs it willingly (or willingly directs another to sign for the testator), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

The State of \_\_\_\_\_  
County of \_\_\_\_\_

Subscribed, sworn to and acknowledged before me by \_\_\_\_\_, the testator, and subscribed and sworn to before me by \_\_\_\_\_, and \_\_\_\_\_, witness, this \_\_\_\_\_ day of \_\_\_\_\_.  
(Seal)

(Signed) \_\_\_\_\_

\_\_\_\_\_  
(Official capacity of officer)

(b) An attested will may be made self-proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

The State of \_\_\_\_\_  
County of \_\_\_\_\_

We, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's will and that the testator had signed willingly (or willingly directed another to sign for the testator), and that the testator executed it as the testator's free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of the witness' knowledge the testator was at that time eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Testator

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Subscribed, sworn to and acknowledged before me by \_\_\_\_\_, the testator, and subscribed and sworn to before me by \_\_\_\_\_, and \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_.  
(Seal)

(Signed) \_\_\_\_\_

\_\_\_\_\_  
(Official capacity of officer)

(c) A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.

**§560:2-505 Who may witness.** (a) An individual generally competent to be a witness may act as a witness to a will.

(b) The signing of a will by an interested witness does not invalidate the will or any provision of it, including any gift to or appointment of the witness.

**§560:2-506 Choice of law as to execution.** A written will is valid if executed in compliance with section 560:2-502 or 560:2-503 or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national.

**§560:2-507 Revocation by writing or by act.** (a) A will or any part thereof is revoked by:

- (1) Executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or
- (2) Performing a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual performed the act in the testator's conscious presence and by the testator's direction. For purposes of this paragraph, "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or any part of it. A burning, tearing, or canceling is a "revocatory act on the will", whether or not the burn, tear, or cancellation touched any of the words on the will.

(b) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

(c) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked; only the subsequent will is operative on the testator's death.

(d) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will; each will is fully operative on the testator's death to the extent they are not inconsistent.

**§560:2-508 Revocation by change of circumstances.** Except as provided in sections 560:2-803 and 560:2-804, a change of circumstances does not revoke a will or any part of it.

**§560:2-509 Revival of revoked will.** (a) If a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory act under section 560:2-507(a)(2), the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.

(b) If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under section 560:2-507(a)(2), a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.

(c) If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by a another, later, will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.

**§560:2-510 Incorporation by reference.** A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

**§560:2-511 Testamentary additions to trusts.** (a) A will may validly devise property to the trustee of a trust established or to be established:

- (1) During the testator's lifetime by the testator, by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts; or
- (2) At the testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust.

The devise is not invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or the testator's death.

(b) Unless the testator's will provides otherwise, property devised to a trust described in subsection (a) is not held under a testamentary trust of the testator, but it becomes a part of the trust to which it is devised, and must be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(c) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise to lapse.

**§560:2-512 Events of independent significance.** A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of another individual's will is such an event.

**§560:2-513 Separate writing identifying devise of certain types of tangible personal property.** Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money. To be admissible under this section as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing that has no significance apart from its effect on the dispositions made by the will.

**§560:2-514 Contracts concerning succession.** A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after the effective date of this article, may be established only by:

- (1) Provisions of a will stating material provisions of the contract;
- (2) An express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or
- (3) A writing signed by the decedent evidencing the contract.

The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

**§560:2-515 Reserved.**

**§560:2-516 Duty of custodian of will; liability.** After the death of a testator and on request of an interested person, a person having custody of a will of the testator shall either deliver it with reasonable promptness to a person able to secure its probate or if none is known, deposit it with an appropriate court. A person who knowingly and wilfully fails to so deliver or deposit a will is liable to any person aggrieved for any damages that may be sustained by the failure, and the court may award treble damages. A person who wilfully refuses to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court. Proceedings under this section shall be brought in the probate proceeding relating to the will.

**§560:2-517 Penalty clause for contest.** A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

## PART 6. RULES OF CONSTRUCTION APPLICABLE ONLY TO WILLS

**§560:2-601 Scope.** In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a will.

**§560:2-602 Will may pass all property and after-acquired property.** A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator's death.

**§560:2-603 Antilapse; deceased devisee; class gifts.** (a) Definitions. In this section:

“Alternative devise” means a devise that is expressly created by the will and, under the terms of the will, can take effect instead of another devise on the

happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise, or nonresiduary devises in general, pass under the residuary clause.

“Class member” includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had he or she survived the testator.

“Devise” includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

“Devisee” includes:

- (1) A class member if the devise is in the form of a class gift;
- (2) An individual or class member who was deceased at the time the testator executed the testator’s will as well as an individual or class member who was then living but who failed to survive the testator; and
- (3) An appointee under a power of appointment exercised by the testator’s will.

“Stepchild” means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment, and not of the testator or donor.

“Surviving devisee” or “surviving descendant” means a devisee or a descendant who neither predeceased the testator nor is deemed to have predeceased the testator under section 560:2-702.

“Testator” includes the donee of a power of appointment if the power is exercised in the testator’s will.

(b) Substitute gift. If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator’s will, the following apply:

- (1) Except as provided in paragraph (4), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee’s surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator;
- (2) Except as provided in paragraph (4), if the devise is in the form of a class gift, other than a devise to “issue”, “descendants”, “heirs of the body”, “heirs”, “next of kin”, “relatives”, or “family”, or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which he or she would have been entitled had the deceased devisees survived the testator. Each deceased devisee’s surviving descendants who are substituted for the deceased devisee take by representation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this paragraph, “deceased devisee” means a class member who failed to survive the testator and left one or more surviving descendants;
- (3) For the purposes of section 560:2-601, words of survivorship, such as in a devise to an individual “if he survives me”, or in a devise to “my surviving children”, are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section;

- (4) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by paragraph (1) or (2), the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will;
- (5) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment can be substituted for the appointee under this section, whether or not the descendant is an object of the power.

(c) More than one substitute gift; which one takes. If, under subsection (b), substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

- (1) Except as provided in paragraph (2), the devised property passes under the primary substitute gift;
- (2) If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift;
- (3) In this subsection:

“Primary devise” means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

“Primary substitute gift” means the substitute gift created with respect to the primary devise.

“Younger-generation devise” means a devise that:

- (A) Is to a descendant of a devisee of the primary devise;
- (B) Is an alternative devise with respect to the primary devise;
- (C) Is a devise for which a substitute gift is created; and
- (D) Would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.

“Younger-generation substitute gift” means the substitute gift created with respect to the younger-generation devise.

**§560:2-604 Failure of testamentary provision.** (a) Except as provided in section 560:2-603, a devise, other than a residuary devise, that fails for any reason becomes a part of the residue.

(b) Except as provided in section 560:2-603, if the residue is devised to two or more persons, the share of a residuary devisee that fails for any reason passes to the other residuary devisee, or to other residuary devisees in proportion to the interest of each in the remaining part of the residue.

**§560:2-605 Increase in securities; accessions.** (a) If a testator executes a will that devises securities and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator’s ownership of the described securities and are securities of any of the following types:

- (1) Securities of the same organization acquired by reason of action initiated by the organization or any successor, related, or acquiring organization, excluding any acquired by exercise of purchase options;



- (2) Securities of another organization acquired as a result of a merger, consolidation, reorganization, or other distribution by the organization or any successor, related, or acquiring organization; or
- (3) Securities of the same organization acquired as a result of a plan of reinvestment.

(b) Distributions in cash before death with respect to a described security are not part of the devise.

**§560:2-606 Nonademption of specific devises; unpaid proceeds of sale, condemnation, or insurance; sale by conservator or agent.** (a) A specific devisee has a right to the specifically devised property in the testator's estate at death and:

- (1) Any balance of the purchase price, together with any security agreement, owing from a purchaser to the testator at death by reason of sale of the property;
- (2) Any amount of a condemnation award for the taking of the property unpaid at death;
- (3) Any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property; and
- (4) Property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation.

(b) If specifically devised property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, or if a condemnation award, insurance proceeds, or recovery for injury to the property are paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(c) The right of a specific devisee under subsection (b) is reduced by any right the devisee has under subsection (a).

(d) For the purposes of the references in subsection (b) to a conservator, subsection (b) does not apply if after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by one year.

(e) For the purposes of the references in subsection (b) to an agent acting within the authority of a durable power of attorney for an incapacitated principal:

- (1) "Incapacitated principal" means a principal who is an incapacitated person;
- (2) No adjudication of incapacity before death is necessary; and
- (3) The acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal.

**§560:2-607 Nonexoneration.** A specific devise passes subject to any mortgage interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

**§560:2-608 Exercise of power of appointment.** In the absence of a requirement that a power of appointment be exercised by a reference, or by an express or specific reference, to the power, a general residuary clause in a will, or a will making general disposition of all of the testator's property, expresses an intention to exercise a power of appointment held by the testator only if:

- (1) The power is a general power and the creating instrument does not contain a gift if the power is not exercised; or

- (2) The testator's will manifests an intention to include the property subject to the power.

**§560:2-609 Ademption by satisfaction.** (a) Property a testator gave in the testator's lifetime to a person is treated as a satisfaction of a devise in whole or in part, only if:

- (1) The will provides for deduction of the gift;
- (2) The testator declared in a contemporaneous writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise; or
- (3) The devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

(b) For purposes of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or at the testator's death, whichever occurs first.

(c) If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying sections 560:2-603 and 560:2-604, unless the testator's contemporaneous writing provides otherwise.

## PART 7. RULES OF CONSTRUCTION APPLICABLE TO WILLS AND OTHER GOVERNING INSTRUMENTS

**§560:2-701 Scope.** In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a governing instrument. The rules of construction in this part apply to a governing instrument of any type, except as the application of a particular section is limited by its terms to a specific type or types of provision or governing instrument.

**§560:2-702 Requirement of survival by one hundred twenty hours.** (a) Requirement of survival by one hundred twenty hours under probate code. For the purposes of this chapter, except as provided in subsection (d), an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by one hundred twenty hours is deemed to have predeceased the event.

(b) Requirement of survival by one hundred twenty hours under governing instrument. Except as provided in subsection (d), for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by one hundred twenty hours is deemed to have predeceased the event.

(c) Co-owners with right of survivorship; requirement of survival by one hundred twenty hours. Except as provided in subsection (d), if:

- (1) It is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by one hundred twenty hours, one-half of the property passes as if one had survived by one hundred twenty hours and one-half as if the other had survived by one hundred twenty hours; and
- (2) There are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by one hundred twenty hours, the property passes in the proportion that one bears to the whole number of co-owners.

For the purposes of this subsection, "co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or

accounts held under circumstances that entitles one or more to the whole of the property or account on the death of the other or others.

- (d) Exceptions. Survival by one hundred twenty hours is not required if:
  - (1) The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;
  - (2) The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period; but survival must be established by clear and convincing evidence;
  - (3) The imposition of a one hundred twenty-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under section 560:2-901(a)(1), (b)(1), or (c)(1) or to become invalid under section 560:2-901(a)(2), (b)(2), or (c)(2); but survival must be established by clear and convincing evidence; or
  - (4) The application of a one hundred twenty-hour requirement of survival to multiple governing instruments would result in an unintended failure or duplication of a disposition; but survival must be established by clear and convincing evidence.
- (e) Protection of payors and other third parties.
  - (1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this section;
  - (2) Written notice of a claimed lack of entitlement under paragraph (1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the judicial circuit of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.
- (f) Protection of bona fide purchasers; personal liability of recipient.
  - (1) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this

section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section; and

- (2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

**§560:2-703 Choice of law as to meaning and effect of governing instrument.** The meaning and legal effect of a governing instrument is determined by the local law of the state selected in the governing instrument, unless the application of that law is contrary to the provisions relating to the elective share described in part 2, the provisions relating to exempt property and allowances described in part 4, the provisions relating to the burden of proof in section 560:3-407, or any other public policy of this state otherwise applicable to the disposition.

**§560:2-704 Power of appointment; meaning of specific reference requirement.** If a governing instrument creating a power of appointment expressly requires that the power be exercised by a reference, an express reference, or a specific reference, to the power or its source, it is presumed that the donor's intention, in requiring that the donee exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power.

**§560:2-705 Class gifts construed to accord with intestate succession.** (a) Adopted individuals and individuals born out of wedlock, and their respective descendants if appropriate to the class, are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Terms of relationship that do not differentiate relationships by blood from those by affinity, such as "uncles", "aunts", "nieces", or "nephews", are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers", "sisters", "nieces", or "nephews", are construed to include both types of relationships.

(b) In addition to the requirements of subsection (a), in construing a dispositive provision of a transferor who is not the natural parent, an individual born to the natural parent is not considered the child of that parent unless the individual lived while a minor as a regular member of the household of that natural parent or of that parent's parent, brother, sister, spouse, or surviving spouse.

(c) In addition to the requirements of subsection (a), in construing a dispositive provision of a transferor who is not the adopting parent, an adopted individual is not considered the child of the adopting parent unless the adopted individual lived while a minor, either before or after the adoption, as a regular member of the household of the adopting parent.

**§560:2-706 Life insurance; retirement plan; account with POD designation; transfer-on-death registration; deceased beneficiary.** (a) Definitions. In this section:

“Alternative beneficiary designation” means a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.

“Beneficiary” means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent and includes:

- (1) A class member if the beneficiary designation is in the form of a class gift; and
- (2) An individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account.

“Beneficiary designation” includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.

“Class member” includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had the individual survived the decedent.

“Stepchild” means a child of the decedent’s surviving, deceased, or former spouse, and not of the decedent.

“Surviving beneficiary” or “surviving descendant” means a beneficiary or a descendant who neither predeceased the decedent nor is deemed to have predeceased the decedent under section 560:2-702.

(b) Substitute gift. If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following apply:

- (1) Except as provided in paragraph (4), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary’s surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent;
- (2) Except as provided in paragraph (4), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to “issue”, “descendants”, “heirs of the body”, “heirs”, “next of kin”, “relatives”, or “family”, or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary’s surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this paragraph, “deceased beneficiary” means a class member who failed to survive the decedent and left one or more surviving descendants;

- (3) For the purposes of section 560:2-701, words of survivorship, such as in a beneficiary designation to an individual "if he survives me", or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section;
- (4) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by paragraph (1) or (2), the substitute gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of the alternative beneficiary designation is entitled to take.
- (c) More than one substitute gift; which one takes. If, under subsection (b), substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

- (1) Except as provided in paragraph (2), the property passes under the primary substitute gift;
- (2) If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift;
- (3) In this subsection:

"Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

"Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.

"Younger-generation beneficiary designation" means a beneficiary designation that:

- (A) Is to a descendant of a beneficiary of the primary beneficiary designation;
- (B) Is an alternative beneficiary designation with respect to the primary beneficiary designation;
- (C) Is a beneficiary designation for which a substitute gift is created; and
- (D) Would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

"Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

- (d) Protection of payors.

- (1) A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given;
- (2) The written notice of the claim must be mailed to the payor's main office or home by registered or certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any

amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the judicial circuit of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payor from all claims for the amounts paid.

- (e) Protection of bona fide purchasers; personal liability of recipient.
- (1) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section;
- (2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

**§560:2-707 Survivorship with respect to future interests under terms of trust; substitute takers.** (a) Definitions. In this section:

“Alternative future interest” means an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.

“Beneficiary” means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

“Class member” includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date.

“Distribution date”, with respect to a future interest, means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.

“Future interest” includes an alternative future interest and a future interest in the form of a class gift.

“Future interest under the terms of a trust” means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a

power of appointment to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust, or creating a trust.

“Surviving beneficiary” or “surviving descendant” means a beneficiary or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date under section 560:2-702.

(b) Survivorship required; substitute gift. A future interest under the terms of a trust executed after the effective date of this section is contingent on the beneficiary’s surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:

- (1) Except as provided in paragraph (4), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary’s surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date;
- (2) Except as provided in paragraph (4), if the future interest is in the form of a class gift, other than a future interest to “issue”, “descendants”, “heirs of the body”, “heirs”, “next of kin”, “relatives”, or “family”, or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary’s surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For the purposes of this paragraph, “deceased beneficiary” means a class member who failed to survive the distribution date and left one or more surviving descendants;
- (3) For the purposes of section 560:2-701, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any other form;
- (4) If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by paragraph (1) or (2), the substitute gift is superseded by the alternative future interest only if an expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

(c) More than one substitute gift; which one takes. If, under subsection (b), substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

- (1) Except as provided in paragraph (2), the property passes under the primary substitute gift;
- (2) If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift;
- (3) In this subsection:



“Primary future interest” means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date.

“Primary substitute gift” means the substitute gift created with respect to the primary future interest.

“Younger-generation future interest” means a future interest that:

- (A) Is to a descendant of a beneficiary of the primary future interest;
- (B) Is an alternative future interest with respect to the primary future interest;
- (C) Is a future interest for which a substitute gift is created; and
- (D) Would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.

“Younger-generation substitute gift” means the substitute gift created with respect to the younger-generation future interest.

(d) If no other takers, property passes under residuary clause or to transferor’s heirs. Except as provided in subsection (e), if, after the application of subsections (b) and (c), there is no surviving taker, the property passes in the following order:

- (1) If the trust was created in a nonresiduary devise in the transferor’s will or in a codicil to the transferor’s will, the property passes under the residuary clause in the transferor’s will; for purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust;
- (2) If no taker is produced by the application of paragraph (1), the property passes to the transferor’s heirs under section 560:2-711.
- (e) If no other takers and if future interest created by exercise of power of appointment. If, after the application of subsections (b) and (c), there is no surviving taker and if the future interest was created by the exercise of a power of appointment:
  - (1) The property passes under the donor’s gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust; and
  - (2) If no taker is produced by the application of paragraph (1), the property passes as provided in subsection (d). For purposes of subsection (d), “transferor” means the donor if the power was a nongeneral power and means the donee if the power was a general power.

**§560:2-708 Class gifts to “descendants”, “issue”, or “heirs of the body”;** form of distribution if none specified. If a class gift in favor of “descendants”, “issue”, or “heirs of the body” does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment, in such shares as they would receive, under the applicable law of intestate succession, if the designated ancestor had then died intestate owning the subject matter of the class gift.

**§560:2-709 Representation; per capita at each generation; per stirpes.** (a) Definitions. In this section:

“Deceased child” or “deceased descendant” means a child or a descendant who either predeceased the distribution date or is deemed to have predeceased the distribution date under section 560:2-702.

“Distribution date”, with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.

“Surviving ancestor”, “surviving child”, or “surviving descendant” means an ancestor, a child, or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date under section 560:2-702.

(b) Representation; per capita at each generation. If an applicable statute or a governing instrument executed after the effective date of this section calls for property to be distributed “by representation” or “per capita at each generation”, the property is divided into as many equal shares as there are:

- (1) Surviving descendants in the generation nearest to the designated ancestor which contains one or more surviving descendants; and
- (2) Deceased descendants in the same generation who left surviving descendants, if any.

Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

(c) Per stirpes. If a governing instrument executed after the effective date of this section calls for property to be distributed “per stirpes”, the property is divided into as many equal shares as there are:

- (1) Surviving children of the designated ancestor; and
- (2) Deceased children who left surviving descendants.

Each surviving child, if any, is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(d) Deceased descendant with no surviving descendant disregarded. For the purposes of subsections (b) and (c), an individual who is deceased and left no surviving descendant is disregarded, and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

**§560:2-710 Worthier-title doctrine abolished.** The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor’s “heirs”, “heirs at law”, “next of kin”, “distributees”, “relatives”, or “family”, or language of similar import, does not create or presumptively create a reversionary interest in the transferor.

**§560:2-711 Interest in “heirs” and like.** If an applicable statute or a governing instrument calls for a present or future distribution to or creates a present or future interest in a designated individual’s “heirs”, “heirs at law”, “next of kin”, “relatives”, or “family”, or language of similar import, the property passes to those persons, including the State, and in such shares as would succeed to the designated individual’s intestate estate under the intestate succession law of the designated individual’s domicile if the designated individual died when the disposition is to take effect in possession or enjoyment. If the designated individual’s surviving spouse is living but is remarried at the time the disposition is to take effect

in possession or enjoyment, the surviving spouse is not an heir of the designated individual.

## **PART 8. GENERAL PROVISIONS CONCERNING PROBATE AND NONPROBATE TRANSFERS**

**§560:2-801 Disclaimer of property interests.** (a) Right to disclaim interest in property. A person, or the representative of a person, to whom an interest in or with respect to property or an interest therein devolves by whatever means may disclaim it in whole or in part by delivering or filing a written disclaimer under this section. The right to disclaim exists notwithstanding:

- (1) Any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction; or
- (2) Any restriction or limitation on the right to disclaim contained in the governing instrument.

For purposes of this subsection, the “representative of a person” includes a personal representative of a decedent, a conservator of a disabled person, a guardian of a minor or incapacitated person, and an agent acting on behalf of the person within the authority of a power of attorney.

(b) Time of disclaimer. The following rules govern the time when a disclaimer must be filed or delivered:

- (1) If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer must be filed, if of a present interest, not later than nine months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than nine months after the event determining that the taker of the property or interest is finally ascertained and the taker’s interest is indefeasibly vested. The disclaimer must be filed in the probate court of the judicial circuit in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced. A copy of the disclaimer must be delivered in person or mailed by registered or certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent or donee of the power;
- (2) If a property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer must be delivered or filed, if of a present interest, not later than nine months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than nine months after the event determining that the taker of the property or interest is finally ascertained and the taker’s interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of the interest, the disclaimer must be delivered or filed not later than nine months after the person learns of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to the maker’s self or another the entire legal and equitable ownership of the interest. The disclaimer or a copy thereof must be delivered in person or mailed by registered or certified mail, return receipt requested, to the person who has legal title to or possession of the interest disclaimed;
- (3) A surviving joint tenant or tenant by the entireties may disclaim as a separate interest any property or interest therein devolving to the tenant by right of survivorship. A surviving joint tenant or tenant by the entireties may disclaim the entire interest in any property or interest

therein that is the subject of a joint tenancy or tenancy by the entireties devolving to that tenant, if the joint tenancy or tenancy by the entireties was created by act of a deceased joint tenant or tenant by the entireties, the survivor did not join in creating the joint tenancy or tenancy by the entireties, and has not accepted a benefit under it;

- (4) If real property or an interest therein is disclaimed, a copy of the disclaimer may be recorded in the office of the bureau of conveyances of the county in which the property or interest disclaimed is located and in the land court, if applicable.

(c) Form of disclaimer. The disclaimer must:

- (1) Describe the property or interest disclaimed;
- (2) Declare the disclaimer and extent thereof;
- (3) Be signed by the disclaimant.

(d) Effect of disclaimer. The effects of a disclaimer are:

- (1) If property or an interest therein devolves to a disclaimant under a testamentary instrument, under a power of appointment exercised by a testamentary instrument, or under the laws of intestacy, and the decedent has not provided for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent, but if by law or under the testamentary instrument the descendants of the disclaimant would share in the disclaimed interest by representation or otherwise were the disclaimant to predecease the decedent, then the disclaimed interest passes by representation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A disclaimer relates back for all purposes to the date of death of the decedent;
- (2) If property or an interest therein devolves to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the effective date of the instrument or contract, but if by law or under the nontestamentary instrument or contract the descendants of the disclaimant would share in the disclaimed interest by representation or otherwise were the disclaimant to predecease the effective date of the instrument, then the disclaimed interest passes by representation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the effective date of the instrument. A disclaimer relates back for all purposes to that date. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed interest; and
- (3) The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and all persons claiming through or under either of them.

(e) Waiver and bar. The right to disclaim property or an interest therein is barred by:

- (1) An assignment, conveyance, encumbrance, pledge, or transfer of the property or interest, or a contract therefor;

- (2) A written waiver of the right to disclaim;
- (3) An acceptance of the property or interest or a benefit under it; or
- (4) A sale of the property or interest under judicial sale made before the disclaimer is made.

(f) Remedy not exclusive. This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest therein under any other statute.

(g) Application. An interest in property that exists on the effective date of this section as to which, if a present interest, the time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained, may be disclaimed within nine months after the effective date of this section.

**§560:2-802 Effect of divorce, annulment, and decree of separation.** (a)

An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(b) For purposes of parts 1, 2, 3, and 4 of this article, and of section 560:3-203, a surviving spouse does not include:

- (1) An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this State, unless subsequently they participate in a marriage ceremony purporting to marry each to the other or live together as husband and wife;
- (2) An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual; or
- (3) An individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

**§560:2-803 Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations.** (a) Definitions. In this section:

“Disposition or appointment of property” includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

“Governing instrument” means a governing instrument executed by the decedent.

“Revocable”, with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent’s self in place of the decedent’s killer and whether or not the decedent then had capacity to exercise the power.

(b) Forfeiture of statutory benefits. An individual who feloniously and intentionally kills the decedent forfeits all benefits under this article with respect to the decedent’s estate, including an intestate share, an elective share, an omitted spouse’s or child’s share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent’s intestate estate passes as if the killer disclaimed the killer’s intestate share.

(c) Revocation of benefits under governing instruments. The felonious and intentional killing of the decedent:

- (1) Revokes any revocable:

- (A) Disposition or appointment of property made by the decedent to the killer in a governing instrument;
- (B) Provision in a governing instrument conferring a general or nongeneral power of appointment on the killer; and
- (C) Nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent;

and

- (2) Severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship, transforming the interests of the decedent and killer into tenancies in common.

(d) Effect of severance. A severance under subsection (c)(2) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(e) Effect of revocation. Provisions of a governing instrument are given effect as if the killer disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

(f) Wrongful acquisition of property. A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from the killer's wrong.

(g) Felonious and intentional killing; how determined. After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, must determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that, under that standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

- (h) Protection of payors and other third parties.

- (1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice of a claimed forfeiture or revocation under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section;
- (2) Written notice of a claimed forfeiture or revocation under paragraph (1) must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay any

amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the judicial circuit of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

- (i) Protection of bona fide purchasers; personal liability of recipient.
- (1) A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section;
- (2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

**§560:2-804 Revocation of probate and nonprobate transfers by divorce; no revocation by other changes of circumstances.** (a) Definitions. In this section:

“Disposition or appointment of property” includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

“Divorce or annulment” means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 560:2-802. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

“Divorced individual” includes an individual whose marriage has been annulled.

“Governing instrument” means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.

“Relative of the divorced individual's former spouse” means an individual who is related to the divorced individual's former spouse by blood, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

“Revocable”, with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing

instrument, to cancel the designation in favor of the individual's former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate the individual's self in place of the individual's former spouse or in place of the individual's former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(b) Revocation upon divorce. Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(1) Revokes any revocable:

- (A) Disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;
- (B) Provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and
- (C) Nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian;

and

(2) Severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship or as community property with the right of survivorship, transforming the interests of the former spouses into tenancies in common.

(c) Effect of severance. A severance under subsection (b)(2) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(d) Effect of revocation. Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(e) Revival if divorce nullified. Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(f) No revocation for other change of circumstances. No change of circumstances other than as described in this section and in section 560:2-803 effects a revocation.

(g) Protection of payors and other third parties.

(1) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or



other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section;

- (2) Written notice of the divorce, annulment, or remarriage under this subsection must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the judicial circuit of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.
- (h) Protection of bona fide purchasers; personal liability of recipient.
- (1) A person who purchases property from a former spouse, relative of a former spouse, or any other person for value and without notice, or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section;
- (2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

## **PART 9. STATUTORY RULE AGAINST PERPETUITIES; HONORARY TRUSTS**

§§560:2-901 to 2-907 Reserved.

## **PART 10. UNIFORM INTERNATIONAL WILLS ACT**

§§560:2-1001 to 2-1010 Reserved.

## ARTICLE III PROBATE OF WILLS AND ADMINISTRATION

### PART 1. GENERAL PROVISIONS

**§560:3-101 Devolution of estate at death; restrictions.** The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to the decedent's property are subject to the restrictions and limitations contained in this chapter to facilitate the prompt settlement of estates. Upon the death of a person, the decedent's real and personal property devolves to the persons to whom it is devised by the decedent's last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates, or in the absence of testamentary disposition, to the decedent's heirs, or to those indicated as substitutes for them in cases involving renunciation or other circumstances affecting devolution of intestate estates, subject to homestead allowance, exempt property and family allowance, to rights of creditors, elective share of the surviving spouse, and to administration.

**§560:3-102 Necessity of order of probate for will.** Except as provided in section 560:3-1201, to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the registrar, or an adjudication of probate by the court.

**§560:3-103 Necessity of appointment for administration.** Except as otherwise provided in article IV, to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or registrar, qualify and be issued letters. Administration of an estate is commenced by the issuance of letters.

**§560:3-104 Claims against decedent; necessity of administration.** No proceeding to enforce a claim against the estate of a decedent or the decedent's successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this article. After distribution, a creditor whose claim has not been barred may recover from the distributees as provided in section 560:3-1004 or from a former personal representative individually liable as provided in section 560:3-1005. This section has no application to a proceeding by a secured creditor of the decedent to enforce the creditor's right to the creditor's security except as to any deficiency judgment which might be sought therein.

**§560:3-105 Proceedings affecting devolution and administration; jurisdiction of subject matter.** Persons interested in decedents' estates may apply to the registrar for determination in the informal proceedings provided in this article, and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in this article. The court has exclusive jurisdiction of formal proceedings to determine how decedents' estates, subject to the laws of this State, are to be administered, expended, and distributed. The court has concurrent jurisdiction of any other action or proceeding concerning a succession or to which an estate, through a personal representative, may be a party, including actions to determine title to property alleged to belong to the estate, and of any action or proceeding in which property distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent.

**§560:3-106 Proceedings within the exclusive jurisdiction of court; service; jurisdiction over persons.** In proceedings within the exclusive jurisdiction of the court where notice is required by this chapter or by rule, and in proceedings to construe probated wills or determine heirs which concern estates that have not been and cannot now be open for administration, interested persons may be bound by the orders of the court in respect to property in or subject to the laws of this State by notice in conformity with section 560:1-401. An order is binding as to all who are given notice of the proceeding though less than all interested persons are notified.

**§560:3-107 Scope of proceedings; proceedings independent; exception.** Unless supervised administration as described in article III, part 5, is involved:

- (1) Each proceeding before the court or registrar is independent of any other proceeding involving the same estate;
- (2) Petitions for formal orders of the court may combine various requests for relief in a single proceeding if the orders sought may be finally granted without delay. Except as required for proceedings which are particularly described by other sections of this article, no petition is defective because it fails to embrace all matters which might then be the subject of a final order;
- (3) Proceedings for probate of wills or adjudications of no will may be combined with proceedings for appointment of personal representatives; and
- (4) A proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.

**§560:3-108 Probate, testacy and appointment proceedings; ultimate time limit.** (a) No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than five years after the decedent's death, except:

- (1) If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred before the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;
- (2) Appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person;
- (3) A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of twelve months from the informal probate or three years from the decedent's death;
- (4) An informal appointment or a formal testacy or appointment proceeding may be commenced thereafter if no proceedings concerning the succession or estate administration have occurred within the five year period after decedent's death, but the personal representative has no right to possess estate assets as provided in section 560:3-709 beyond that necessary to confirm title thereto in the successors to the estate and

claims other than expenses of administration may not be presented against the estate; and

- (5) A formal testacy proceeding may be commenced at any time after five years from the decedent's death if, in the discretion of the court it would be equitable to do so, for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

(b) These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate.

(c) In cases under subsection (a)(1) or (2) the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this chapter which relate to the date of death.

**§560:3-109 Statutes of limitation on decedent's cause of action.** No statute of limitation running on a cause of action belonging to a decedent which had not been barred as of the date of the decedent's death, shall apply to bar a cause of action surviving the decedent's death sooner than four months after death. A cause of action which, but for this section, would have been barred less than four months after death, is barred after four months unless tolled.

## **PART 2. VENUE FOR PROBATE AND ADMINISTRATION; PRIORITY TO ADMINISTER; DEMAND FOR NOTICE**

**§560:3-201 Venue for first and subsequent estate proceedings; location of property.** (a) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:

- (1) In the judicial circuit where the decedent had the decedent's domicile at the time of the decedent's death; or
- (2) If the decedent was not domiciled in this State, in any judicial circuit where property of the decedent was located at the time of the decedent's death.

(b) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in section 560:1-303 or subsection (c).

(c) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.

(d) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving non-domiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a non-domiciliary is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper, and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

**§560:3-202 Appointment or testacy proceedings; conflicting claim of domicile in another state.** If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this State, and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this State must stay, dismiss, or permit suitable amendment in, the

proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this State.

**§560:3-203 Priority among persons seeking appointment as personal representative.** (a) Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

- (1) The person with priority as determined by a probated will including a person nominated by a power conferred in a will;
- (2) The surviving spouse of the decedent who is a devisee of the decedent;
- (3) Other devisees of the decedent;
- (4) The surviving spouse of the decedent;
- (5) Other heirs of the decedent; and
- (6) Forty-five days after the death of the decedent, any creditor.

(b) An objection to an appointment can be made only in formal proceedings.

In case of objection the priorities stated in subsection (a) apply except that:

- (1) If the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;
- (2) In case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value, or, in default of this accord any suitable person.

(c) A person entitled to letters under subsection (a)(2) to (5), and a person aged eighteen and over who would be entitled to letters but for the person's age, may nominate a qualified person to act as personal representative. Any person aged eighteen and over may renounce the person's right to nominate or to an appointment by appropriate writing filed with the court. When two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them, or in applying for appointment.

(d) Conservators or guardians of the estates of protected persons, or if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

(e) Appointment of one who does not have priority, including priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.

(f) No person is qualified to serve as a personal representative who is:

- (1) Under the age of eighteen; and
- (2) A person whom the court finds unsuitable in formal proceedings.

(g) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representative in this State and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

(h) This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.

**§560:3-204 Demand for notice of order or filing concerning decedent's estate.** Any person desiring notice of any order or filing pertaining to a decedent's estate in which the person has a financial or property interest, may file a demand for notice with the court at any time after the death of the decedent stating the name of the decedent, the nature of the person's interest in the estate, and the demandant's address or that of the demandant's attorney. The clerk shall mail a copy of the demand to the personal representative if one has been appointed. After filing of a demand, no order or filing to which the demand relates shall be made or accepted without notice as prescribed in section 560:1-401 to the demandant or the demandant's attorney. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of the demandant's interest in the estate.

### **PART 3. INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS**

**§560:3-301 Informal probate or appointment proceedings; application; contents.** (a) Applications for informal probate or informal appointment shall be directed to the registrar, and verified by the applicant to be accurate and complete to the best of the applicant's knowledge and belief as to the following information:

- (1) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:
  - (A) A statement of the interest of the applicant, together with the name, address, and telephone number of the applicant;
  - (B) The name, and date of death of the decedent, the decedent's age, and the county and state of the decedent's domicile at the time of death, and the names and addresses of the spouse, children, heirs, and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;
  - (C) If the decedent was not domiciled in the State at the time of the decedent's death, a statement showing venue;
  - (D) A statement identifying and indicating the address of any personal representative of the decedent appointed in this State or elsewhere whose appointment has not been terminated;
  - (E) A statement indicating whether the applicant has received a demand for notice, or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this State or elsewhere; and
  - (F) That the time limit for informal probate or appointment as provided in this article has not expired either because five years or less have passed since the decedent's death, or, if more than five years from death have passed, circumstances as described by section 560:3-108 authorizing tardy probate or appointment have occurred;
- (2) An application for informal probate of a will shall state the following in addition to the statements required by paragraph (1):

- (A) That the original of the decedent's last will is in the possession of the court, or accompanies the application, or that an authenticated copy of a will probated in another jurisdiction accompanies the application;
  - (B) That the applicant, to the best of applicant's knowledge, believes the will to have been validly executed; and
  - (C) That after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will;
- (3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address, and priority for appointment of the person whose appointment is sought;
- (4) An application for informal appointment of an administrator in intestacy shall state in addition to the statements required by paragraph (1):
- (A) That after the exercise of reasonable diligence, the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this State under section 560:1-301, or, a statement why any such instrument of which the applicant may be aware is not being probated; and
  - (B) The priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 560:3-203;
- (5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant;
- (6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in 560:3-610(c), or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

(b) By verifying an application for informal probate, or informal appointment, the applicant submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating to the application, or for perjury, that may be instituted against the applicant.

**§560:3-302 Informal probate; duty of registrar; effect of informal probate.** (a) Upon receipt of an application requesting informal probate of a will filed by a corporate fiduciary, by a parent or spouse of the decedent, or by a descendant of a parent of the decedent, the registrar, upon making the findings required by section 560:3-303, shall issue a written statement of informal probate, if at least one hundred twenty hours have elapsed since the decedent's death.

(b) Upon receipt of an application requesting informal probate of a will filed by someone other than as enumerated in subsection (a), the registrar shall set a date which shall be the earliest by which the registrar will decide the application. On or after such date, upon making the findings required by section 560:3-303, the registrar shall issue a written statement of informal probate, granting any request for statutory allowances and exempt property, and appointing a personal representative subject to acceptance if at least fourteen days have passed after the last mailing or other delivery of the advance notice required by section 560:3-306, if proof that such notice has been given is filed with the registrar and if no petition for formal testacy proceedings has been filed.

(c) Informal probate is conclusive as to all persons until superseded by an order in a formal testacy proceeding. No defect in the application or procedure relating thereto which leads to informal probate of a will renders the probate void.

**§560:3-303 Informal probate; proof and findings required.** (a) In an informal proceeding for original probate of a will, the registrar shall determine whether:

- (1) The application is complete;
- (2) The applicant has made an oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;
- (3) The applicant appears from the application to be an interested person as defined in section 560:1-201;
- (4) On the basis of the statements in the application, venue is proper;
- (5) An original, duly executed and apparently unrevoked will is in the registrar's possession;
- (6) Any notice required by sections 560:3-204 and 560:3-306 has been given and that the application is not within section 560:3-304; and
- (7) It appears from the application that the time limit for original probate has not expired.

(b) The application shall be denied if it indicates that a personal representative has been appointed in another judicial circuit of this State or except as provided in subsection (d), if it appears that this or another will of the decedent has been the subject of a previous probate order.

(c) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under section 560:2-502, 560:2-503, or 560:2-506 have been met shall be probated without further proof. In other cases, the registrar may assume execution if the will appears to have been properly executed, or the registrar may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(d) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(e) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (a), may be probated in this State upon receipt by the registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

**§560:3-304 Informal probate; unavailable in certain cases.** Applications for informal probate which relate to one or more of a known series of testamentary



instruments (other than a will and one or more codicils thereto), the latest of which does not expressly revoke the earlier, shall be declined.

**§560:3-305 Informal probate; registrar not satisfied.** If the registrar is not satisfied that a will is entitled to be probated in informal proceedings because of failure to meet the requirements of sections 560:3-303 and 560:3-304 or any other reason, the registrar may decline the application. A declination of informal probate is not an adjudication and does not preclude formal probate proceedings.

**§560:3-306 Informal probate; notice requirements.** (a) The moving party must give notice as described by section 560:1-401 of the party's application for informal probate to any person demanding it pursuant to section 560:3-204 and to any personal representative of the decedent whose appointment has not been terminated. No other notice of informal probate is required.

(b) In addition, for any application for informal probate under section 560:3-302(b), the moving party must mail an advance notice to the heirs and devisees informing them of the party's application. The advance notice shall include the name and address of the applicant, the name and location of the court in which the application has been filed for informal probate, a copy of the application, a copy of any will and codicil being submitted for probate, and the date on which the registrar will act on the application. The advance notice shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the applicant.

(c) If an informal probate is granted, within thirty days thereafter the applicant shall give written information of the probate to the heirs and devisees. The information shall include the name and address of the applicant, the name and location of the court granting the informal probate, and the date of the probate and, if not already delivered with any advance notice, a copy of the application, a copy of any will and codicil submitted for probate, and notice that attorney fees incurred on behalf of the estate will be reviewed by the probate court only if an interested person requests such a review. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the applicant. No duty to give information is incurred if a personal representative is appointed who is required to give the written information required by section 560:3-705. An applicant's failure to give information as required by this section is a breach of the applicant's duty to the heirs and devisees but does not affect the validity of the probate.

**§560:3-307 Informal appointment proceedings; delay in order; duty of registrar; effect of appointment.** (a) Upon receipt of an application for informal appointment of a personal representative other than a special administrator as provided in section 560:3-614, if at least one hundred twenty hours have elapsed since the decedent's death, and after the registrar has made the findings required by section 560:3-308, the registrar shall appoint the applicant subject to qualification and acceptance; provided that if the decedent was a non-resident, the registrar shall delay the order of appointment until thirty days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that the decedent's estate be subject to the laws of this State.

(b) The status of personal representative and the powers and duties pertaining to the office are fully established by informal appointment. An appointment, and the office of personal representative created thereby, is subject to termination as provided in sections 560:3-608 to 560:3-612, but is not subject to retroactive vacation.

**§560:3-308 Informal appointment proceedings; proof and findings required.** (a) In informal appointment proceedings, the registrar must determine whether:

- (1) The application for informal appointment of a personal representative is complete;
- (2) The applicant has made an oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;
- (3) The applicant appears from the application to be an interested person as defined in section 560:1-201;
- (4) On the basis of the statements in the application, venue is proper;
- (5) Any will to which the requested appointment relates has been formally or informally probated; but this requirement does not apply to the appointment of a special administrator;
- (6) Any notice required by section 560:3-204 has been given; and
- (7) From the statements in the application, the person whose appointment is sought has priority entitling the person to the appointment.

(b) Unless section 560:3-612 controls, the application must be denied if it indicates that a personal representative who has not filed a written statement of resignation as provided in section 560:3-610(c) has been appointed in this or another judicial circuit of this State, that (unless the applicant is the domiciliary personal representative or the domiciliary personal representative's nominee) the decedent was not domiciled in this State and that a personal representative whose appointment has not been terminated has been appointed by a court in the state of domicile, or that other requirements of this section have not been met.

**§560:3-309 Informal appointment proceedings; registrar not satisfied.** If the registrar is not satisfied that a requested informal appointment of a personal representative should be made because of failure to meet the requirements of sections 560:3-307 and 560:3-308, or for any other reason, the registrar may decline the application. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings.

**§560:3-310 Informal appointment proceedings; notice requirements.** The moving party must give notice as described by section 560:1-401 of the moving party's intention to seek an appointment informally:

- (1) To any person demanding it pursuant to section 560:3-204; and
- (2) To any person having a prior or equal right to appointment not waived in writing and filed with the court.

No other notice of an informal appointment proceeding is required.

**§560:3-311 Informal appointment unavailable in certain cases.** If an application for informal appointment indicates the existence of a possible unrevoked testamentary instrument which may relate to property subject to the laws of this State, and which is not filed for probate in this court, the registrar shall decline the application.

**§§560:3-312 to 3-322 Reserved.**

## **PART 4. FORMAL TESTACY AND APPOINTMENT PROCEEDINGS**

**§560:3-401 Formal testacy proceedings; nature; when commenced.** (a) A formal testacy proceeding is litigation to determine whether a decedent left a valid will. A formal testacy proceeding may be commenced by an interested person filing

a petition as described in section 560:3-402(a) in which the person requests that the court, after notice and hearing, enter an order probating a will, or a petition to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, or a petition in accordance with section 560:3-402(b) for an order that the decedent died intestate.

(b) A petition may seek formal probate of a will without regard to whether the same or a conflicting will has been informally probated. A formal testacy proceeding may, but need not, involve a request for appointment of a personal representative.

(c) During the pendency of a formal testacy proceeding, the registrar shall not act upon any application for informal probate of any will of the decedent or any application for informal appointment of a personal representative of the decedent.

(d) Unless a petition in a formal testacy proceeding also requests confirmation of the previous informal appointment, a previously appointed personal representative, after receipt of notice of the commencement of a formal probate proceeding, must refrain from exercising the personal representative's power to make any further distribution of the estate during the pendency of the formal proceeding. A petitioner who seeks the appointment of a different personal representative in a formal proceeding also may request an order restraining the acting personal representative from exercising any of the powers of the personal representative's office and requesting the appointment of a special administrator. In the absence of a request, or if the request is denied, the commencement of a formal proceeding has no effect on the powers and duties of a previously appointed personal representative other than those relating to distribution.

**§560:3-402 Formal testacy or appointment proceedings; petition; contents.** (a) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing and contain further statements as indicated in this section. A petition for formal probate of a will:

- (1) Requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs;
- (2) Contains the statements required for informal applications as stated in the six subparagraphs under section 560:3-301(a)(1), the statements required by subparagraphs (B) and (C) of section 560:3-301(a)(2); and
- (3) States whether the original of the last will of the decedent is in the possession of the court or accompanies the petition.

If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable.

(b) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by section 560:3-301(a)(1) and (4) and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case, the statements required by section 560:3-301(a)(4)(B).

**§560:3-403 Formal testacy proceedings; notice of hearing on petition.** (a) Upon commencement of a formal testacy proceeding, the court shall fix a time and place of hearing. Notice shall be given in the manner prescribed by section 560:1-401 by the petitioner to the persons herein enumerated and to any additional person

who has filed a demand for notice under section 560:3-204. The notice shall include the name and address of the applicant, the name and location of the court hearing the petition, and the date of the hearing.

(b) Notice shall be given to the following persons: the surviving spouse, children, and other heirs of the decedent, the devisees and executors named in any will that is being, or has been, probated, or offered for informal or formal probate in the judicial circuit or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated. Notice may be given to other persons. In addition, the petitioner shall give notice by publication to all unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated.

(c) If it appears by the petition or otherwise that the fact of the death of the alleged decedent may be in doubt, or on the written demand of any interested person, a copy of the notice of the hearing on the petition shall be sent by registered or certified mail to the alleged decedent at the alleged decedent's last known address. The court shall direct the petitioner to report the results of, or make and report back concerning, a reasonably diligent search for the alleged decedent in any manner that may seem advisable, including any or all of the following methods:

- (1) By inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;
- (2) By notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent; or
- (3) By engaging the services of an investigator.

The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

**§560:3-404 Formal testacy proceedings; written objections to probate.**

Any party to a formal proceeding who opposes the probate of a will for any reason shall state in the party's pleadings the party's objections to probate of the will.

**§560:3-405 Formal testacy proceedings; uncontested cases; hearings and proof.** If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section 560:3-409 have been met, or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

**§560:3-406 Formal testacy proceedings; contested cases; testimony of attesting witnesses.** (a) If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the State, competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

(b) If the will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment and affidavits annexed or attached thereto, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit.

**§560:3-407 Formal testacy proceedings; burdens in contested cases.** In contested cases, petitioners who seek to establish intestacy have the burden of

establishing prima facie proof of death, venue, and heirship. Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation. Unless the burden of proof is changed by other provisions of law, parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.

**§560:3-408 Formal testacy proceedings; will construction; effect of final order in another jurisdiction.** A final order of a court of another state determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this State if it includes, or is based upon, a finding that the decedent was domiciled at the decedent's death in the state where the order was made.

**§560:3-409 Formal testacy proceedings; order; foreign will.** After the time required for any notice has expired, upon proof of notice, and after any hearing that may be necessary, if the court finds that the testator is dead, venue is proper and that the proceeding was commenced within the limitation prescribed by section 560:3-108, it shall determine the decedent's domicile at death, the decedent's heirs and the decedent's state of testacy. Any will found to be valid and unrevoked shall be formally probated. Termination of any previous informal appointment of a personal representative, which may be appropriate in view of the relief requested and findings, is governed by section 560:3-612. The petition shall be dismissed or appropriate amendment allowed if the court is not satisfied that the alleged decedent is dead. A will from a place which does not provide for probate of a will after death, may be proved for probate in this State by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become effective under the law of the other place.

**§560:3-410 Formal testacy proceedings; probate of more than one instrument.** If two or more instruments are offered for probate before a final order is entered in a formal testacy proceeding, more than one instrument may be probated if neither expressly revokes the other or contains provisions which work a total revocation by implication. If more than one instrument is probated, the order shall indicate what provisions control in respect to the nomination of an executor, if any. The order may, but need not, indicate how any provisions of a particular instrument are affected by the other instrument. After a final order in a testacy proceeding has been entered, no petition for probate of any other instrument of the decedent may be entertained, except incident to a petition to vacate or modify a previous probate order and subject to the time limits of section 560:3-412.

**§560:3-411 Formal testacy proceedings; partial intestacy.** If it becomes evident in the course of a formal testacy proceeding that, though one or more instruments are entitled to be probated, the decedent's estate is or may be partially intestate, the court shall enter an order to that effect.

**§560:3-412 Formal testacy proceedings; effect of order; vacation.** Subject to appeal and subject to vacation as provided in this section and in section 560:3-

413, a formal testacy order under sections 560:3-409 to 560:3-411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:

- (1) The court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will:
  - (A) Were unaware of its existence at the time of the earlier proceeding; or
  - (B) Were unaware of the earlier proceeding and were given no notice thereof, except by publication;
- (2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of the decedent's death or were given no notice of any proceeding concerning the decedent's estate, except by publication;
- (3) A petition for vacation under paragraph (1) or (2) must be filed prior to the earlier of the following time limits:
  - (A) If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate, or, if the estate is closed by statement, six months after the filing of the closing statement;
  - (B) Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by section 560:3-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent; or
  - (C) Twelve months after the entry of the order sought to be vacated;
- (4) The order originally rendered in the testacy proceeding may be modified or vacated, if appropriate under the circumstances, by the order of probate of the later-offered will or the order redetermining heirs;
- (5) The finding of the fact of death is conclusive as to the alleged decedent only if notice of the hearing on the petition in the formal testacy proceeding was sent by registered or certified mail addressed to the alleged decedent at the decedent's last known address and the court finds that a search under section 560:3-403(b) was made.

If the alleged decedent is not dead, even if notice was sent and search was made, the alleged decedent may recover estate assets in the hands of the personal representative. In addition to any remedies available to the alleged decedent by reason of any fraud or intentional wrongdoing, the alleged decedent may recover any estate or its proceeds from distributees that is in their hands, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances.

**§560:3-413 Formal testacy proceedings; vacation of order for other cause.** For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

**§560:3-414 Formal proceedings concerning appointment of personal representative.** (a) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as personal representative,

or of one who previously has been appointed personal representative in informal proceedings, if an issue concerning the testacy of the decedent is or may be involved, is governed by section 560:3-402, as well as by this section. In other cases, the petition shall contain or adopt the statements required by section 560:3-301(a)(1) and describe the question relating to priority or qualification of the personal representative which is to be resolved. If the proceeding precedes any appointment of a personal representative, it shall stay any pending informal appointment proceedings as well as any commenced thereafter. If the proceeding is commenced after appointment, the previously appointed personal representative, after receipt of notice thereof, shall refrain from exercising any power of administration except as necessary to preserve the estate or unless the court orders otherwise.

(b) After notice to interested persons, including all persons interested in the administration of the estate as successors under the applicable assumption concerning testacy, any previously appointed personal representative and any person having or claiming priority for appointment as personal representative, the court shall determine who is entitled to appointment under section 560:3-203, make a proper appointment and, if appropriate, terminate any prior appointment found to have been improper as provided in cases of removal under section 560:3-611.

## PART 5. SUPERVISED ADMINISTRATION

**§560:3-501 Supervised administration; nature of proceeding.** Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent's estate under the continuing authority of the court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding. A supervised personal representative is responsible to the court, as well as to the interested parties, and is subject to directions concerning the estate made by the court on its own motion or on the motion of any interested party. Except as otherwise provided in this part, or as otherwise ordered by the court, a supervised personal representative has the same duties and powers as a personal representative who is not supervised.

**§560:3-502 Supervised administration; petition; order.** A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied. After notice to interested persons, the court shall order supervised administration of a decedent's estate:

- (1) If the decedent's will directs supervised administration, it shall be ordered unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;
- (2) If the decedent's will directs unsupervised administration, supervised administration shall be ordered only upon a finding that it is necessary for protection of persons interested in the estate; or
- (3) In other cases if the court finds that supervised administration is necessary under the circumstances.

**§560:3-503 Supervised administration; effect on other proceedings.** (a)

The pendency of a proceeding for supervised administration of a decedent's estate stays action on any informal application then pending or thereafter filed.

(b) If a will has been previously probated in informal proceedings, the effect of the filing of a petition for supervised administration is as provided for formal testacy proceedings by section 560:3-401.

(c) After the personal representative has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously shall not exercise the personal representative's power to distribute any estate. The filing of the petition does not affect the personal representative's other powers and duties unless the court restricts the exercise of any of them pending full hearing on the petition.

**§560:3-504 Supervised administration; powers of personal representative.** Unless restricted by the court, a supervised personal representative has, without interim orders approving exercise of a power, all powers of personal representatives under this chapter, but the personal representative shall not exercise the personal representative's power to make any distribution of the estate without prior order of the court. Any other restriction on the power of a personal representative which may be ordered by the court must be endorsed on the personal representative's letters of appointment and, unless so endorsed, is ineffective as to persons dealing in good faith with the personal representative.

**§560:3-505 Supervised administration; interim orders; distribution and closing orders.** Unless otherwise ordered by the court, supervised administration is terminated by order in accordance with time restrictions, notices and contents of orders prescribed for proceedings under section 560:3-1001. Interim orders approving or directing partial distributions or granting other relief may be issued by the court at any time during the pendency of a supervised administration on the application of the personal representative or any interested person.

**PART 6. PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL, AND TERMINATION OF AUTHORITY**

**§560:3-601 Qualification.** Prior to receiving letters, a personal representative shall qualify by filing with the appointing court any required bond and a statement of acceptance of the duties of the office.

**§560:3-602 Acceptance of appointment; consent to jurisdiction.** By accepting appointment, a personal representative submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the personal representative, or mailed to the personal representative by ordinary first class mail at the personal representative's address as listed in the application or petition for appointment or as thereafter reported to the court and to the personal representative's address as then known to the petitioner.

**§560:3-603 Bond not required without court order, exceptions.** No bond is required of a personal representative appointed in informal proceedings, except:

- (1) Upon the appointment of a special administrator where bond has been requested by an interested party and the court is satisfied that it is desirable;



- (2) When an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond; or
- (3) When bond is required under section 560:3-605. Bond may be required by court order at the time of appointment of a personal representative appointed in any formal proceeding except that bond is not required of a personal representative appointed in formal proceedings if the will relieves the personal representative of bond, unless bond has been requested by an interested party and the court is satisfied that it is desirable. Bond required by any will may be dispensed with in formal proceedings upon determination by the court that it is not necessary. No bond is required of any personal representative who, pursuant to statute, has deposited cash or collateral with an agency of this State to secure performance of the personal representative's duties.

**§560:3-604 Bond amount; security; procedure; reduction.** If bond is required and the provisions of the will or order do not specify the amount, unless stated in the person's application or petition, the person qualifying shall file a statement under oath with the registrar indicating the person's best estimate of the value of the personal estate of the decedent and of the income expected from the personal and real estate during the next year, and the person shall execute and file a bond with the registrar, or give other suitable security, in an amount not less than the estimate. The registrar shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. The registrar may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution (as defined in section 560:6-101) in a manner that prevents their unauthorized disposition. On petition of the personal representative or another interested person the court may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties, or permit the substitution of another bond with the same or different sureties.

**§560:3-605 Demand for bond by interested person.** Any person apparently having an interest in the estate worth in excess of \$1000, or any creditor having a claim in excess of \$1000, may make a written demand that a personal representative give bond. The demand must be filed with the registrar and a copy mailed to the personal representative, if appointment and qualification have occurred. Thereupon, bond is required, but the requirement ceases if the person demanding bond ceases to be interested in the estate, or if bond is excused as provided in section 560:3-603 or 560:3-604. After the personal representative has received notice and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of the office except as necessary to preserve the estate. Failure of the personal representative to meet a requirement of bond by giving suitable bond within thirty days after receipt of notice is cause for the personal representative's removal and appointment of a successor personal representative.

**§560:3-606 Terms and conditions of bonds.** (a) The following requirements and provisions apply to any bond required by this part:

- (1) Bonds shall name the presiding judge and the judge's successors as obligee for the benefit of the persons interested in the estate and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law;

- (2) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond;
- (3) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the probate court which issued letters to the primary obligor in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceeding shall be delivered to the surety or mailed to the surety by registered or certified mail at the surety's address as listed with the court where the bond is filed and to the surety's address as then known to the petitioner;
- (4) On petition of a successor personal representative, any other personal representative of the same decedent, or any interested person, a proceeding in the court may be initiated against a surety for breach of the obligation of the bond of the personal representative;
- (5) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted;
- (6) No bond hereunder shall be conditioned so as to relieve the surety from liability either on account of any breach by the personal representative of the personal representative's duties to the court, the registrar, the estate or interested persons, or on account of a failure by the personal representative to perform the acts or duties required of the personal representative by this chapter, and any provision of a bond which seeks to so limit the surety's liability shall be void and of no effect.

(b) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

**§560:3-607 Order restraining personal representative.** (a) On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution, or exercise of any powers or discharge of any duties of office, or make any other order to secure proper performance of the personal representative's duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person. Persons with whom the personal representative may transact business may be made parties.

(b) The matter shall be set for hearing within ten days unless the parties otherwise agree. Notice as the court directs shall be given to the personal representative and the personal representative's attorney of record, if any, and to any other parties named defendant in the petition.

**§560:3-608 Termination of appointment; general.** Termination of appointment of a personal representative occurs as indicated in sections 560:3-609 to 560:3-612. Termination ends the right and power pertaining to the office of personal representative as conferred by this chapter or any will, except that a personal representative, at any time prior to distribution or until restrained or enjoined by court order, may perform acts necessary to protect the estate and may deliver the assets to a successor representative. Termination does not discharge a personal representative from liability for transactions or omissions occurring before termination, or relieve the personal representative of the duty to preserve assets subject to the personal representative's control, to account therefor and to deliver the assets. Termination does not affect the jurisdiction of the court over the personal representa-

tive, but terminates the personal representative's authority to represent the estate in any pending or future proceeding.

**§560:3-609 Termination of appointment; death or disability.** The death of a personal representative or the appointment of a conservator for the estate of a personal representative, terminates the personal representative's appointment. Until appointment and qualification of a successor or special representative to replace the deceased or protected representative, the representative of the estate of the deceased or protected personal representative, if any, has the duty to protect the estate possessed and being administered by the decedent or ward at the time the appointment terminates, has the power to perform acts necessary for protection and shall account for and deliver the estate assets to a successor or special personal representative upon appointment and qualification.

**§560:3-610 Termination of appointment; voluntary.** (a) An appointment of a personal representative terminates as provided in section 560:3-1003, one year after the filing of a closing statement.

(b) An order closing an estate as provided in section 560:3-1001 or 560:3-1002 terminates an appointment of a personal representative.

(c) A personal representative may resign the position by filing a written statement of resignation with the registrar after the personal representative has given at least fifteen days written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to that representative.

**§560:3-611 Termination of appointment by removal; cause; procedure.**

(a) A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in section 560:3-607, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration, or to preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

(b) Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking the personal representative's appointment intentionally misrepresented material facts in the proceedings leading to the appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of the office, or has mismanaged the estate or failed to perform any duty pertaining to the office. Unless the decedent's will directs otherwise, a personal representative appointed at the decedent's domicile, incident to securing appointment of the personal representative's self or a nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this State to administer local assets.

**§560:3-612 Termination of appointment; change of testacy status.** Except as otherwise ordered in formal proceedings, the probate of a will subsequent to the appointment of a personal representative in intestacy or under a will which is superseded by formal probate of another will, or the vacation of an informal probate

of a will subsequent to the appointment of the personal representative thereunder, does not terminate the appointment of the personal representative although the personal representative's powers may be reduced as provided in section 560:3-401. Termination occurs upon appointment in informal or formal appointment proceedings of a person entitled to appointment under the later assumption concerning testacy. If no request for new appointment is made within thirty days after expiration of time for appeal from the order in formal testacy proceedings, or from the informal probate, changing the assumption concerning testacy, the previously appointed personal representative upon request may be appointed personal representative under the subsequently probated will, or as in intestacy as the case may be.

**§560:3-613 Successor personal representative.** Parts 3 and 4 of this article govern proceedings for appointment of a personal representative to succeed one whose appointment has been terminated. After appointment and qualification, a successor personal representative may be substituted in all actions and proceedings to which the former personal representative was a party, and no notice, process or claim which was given or served upon the former personal representative need be given to or served upon the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative. Except as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration which the former personal representative would have had if the appointment had not been terminated.

**§560:3-614 Special administrator; appointment.** A special administrator may be appointed:

- (1) Informally by the registrar on the application of any interested person when necessary to protect the estate of a decedent prior to the appointment of a general personal representative or if a prior appointment has been terminated as provided in section 560:3-609; and
- (2) In a formal proceeding by order of the court on the petition of any interested person and finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration including its administration in circumstances where a general personal representative cannot or should not act. If it appears to the court that an emergency exists, appointment may be ordered without notice.

**§560:3-615 Special administrator; who may be appointed.** (a) If a special administrator is to be appointed pending the probate of a will which is the subject of a pending application or petition for probate, the person named executor in the will shall be appointed if available, and qualified.

(b) In other cases, any proper person may be appointed special administrator.

**§560:3-616 Special administrator; appointed informally; powers and duties.** A special administrator appointed by the registrar in informal proceedings pursuant to section 560:3-614(1) has the duty to collect and manage the assets of the estate, to preserve them, to account therefor, and to deliver them to the general personal representative upon qualification. The special administrator has the power of a personal representative under this chapter necessary to perform the special administrator's duties.

**§560:3-617 Special administrator; formal proceedings; power and duties.** A special administrator appointed by order of the court in any formal

proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order. The appointment may be for a specified time, to perform particular acts or on other terms as the court may direct.

**§560:3-618 Termination of appointment; special administrator.** The appointment of a special administrator terminates in accordance with the provisions of the order of appointment or on the appointment of a general personal representative. In other cases, the appointment of a special administrator is subject to termination as provided in sections 560:3-608 through 560:3-611.

## **PART 7. DUTIES AND POWERS OF PERSONAL REPRESENTATIVES**

**§560:3-701 Time of accrual of duties and powers.** The duties and powers of a personal representative commence upon appointment. The powers of a personal representative relate back in time to give acts by the person appointed which are beneficial to the estate occurring prior to the person's appointment the same effect as those occurring thereafter. Prior to the person's appointment, a person named executor in a will may carry out written instructions of the decedent relating to the decedent's body, funeral, and burial arrangements. A personal representative may ratify and accept acts on behalf of the estate done by others where the acts would have been proper for a personal representative.

**§560:3-702 Priority among different letters.** A person to whom general letters are issued first has exclusive authority under the letters until the person's appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first appointed representative may recover any property of the estate in the hands of the representative subsequently appointed, but the acts of the latter done in good faith before notice of the first letters are not void for want of validity of appointment.

**§560:3-703 General duties; relation and liability to persons interested in estate; standing to sue.** (a) A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by section 560:7-302. A personal representative is under a duty to settle and distribute the estate of the decedent in accordance with the terms of any probated and effective will and this chapter, and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred upon the personal representative by this chapter, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate.

(b) A personal representative shall not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will is authority to administer and distribute the estate according to its terms. An order of appointment of a personal representative, whether issued in informal or formal proceedings, is authority to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy proceeding, a formal proceeding questioning the personal representative's appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent as described elsewhere in this chapter.

(c) Except as to proceedings which do not survive the death of the decedent, a personal representative of a decedent domiciled in this State at the decedent's death has the same standing to sue and be sued in the courts of this State and the courts of any other jurisdiction as the decedent had immediately prior to death.

**§560:3-704 Personal representative to proceed without court order; exception.** A personal representative shall proceed expeditiously with the settlement and distribution of a decedent's estate and, except as otherwise specified or ordered in regard to a supervised personal representative, do so without adjudication, order, or direction of the court, but the personal representative may invoke the jurisdiction of the court, in proceedings authorized by this chapter, to resolve questions concerning the estate or its administration.

**§560:3-705 Duty of personal representative; information to heirs and devisees.** Not later than thirty days after the appointment every personal representative, except any special administrator, shall give information of the personal representative's appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information shall include the name and address of the personal representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relating to the estate are on file. The information shall state that the estate is being administered by the personal representative under the Hawaii Probate Code without supervision by the court but that recipients are entitled to information regarding the administration from the personal representative and can petition the court in any matter relating to the estate, including distribution of assets and expenses of administration. The personal representative's failure to give this information is a breach of duty to the persons concerned but does not affect the validity of the personal representative's appointment, powers, or other duties. A personal representative may inform other persons of appointment by delivery or ordinary first class mail.

**§560:3-706 Duty of personal representative; inventory and appraisal.** Within three months after the appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory of property owned by the decedent at the time of death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

The personal representative shall send a copy of the inventory to interested persons who request it. The personal representative may also file the original of the inventory with the court.

**§560:3-707 Employment of appraisers.** The personal representative may employ a qualified and disinterested appraiser to assist in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise

different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items appraised.

**§560:3-708 Duty of personal representative; supplementary inventory.**

If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, the personal representative shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information.

**§560:3-709 Duty of personal representative; possession of estate.**

Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate in the personal representative's possession. The personal representative may maintain an action to recover possession of property or to determine the title thereto.

**§560:3-710 Power to avoid transfers.**

The property liable for the payment of unsecured debts of a decedent includes all property transferred by the decedent by any means which is in law void or voidable as against the decedent's creditors, and subject to prior liens, the right to recover this property, so far as necessary for the payment of unsecured debts of the decedent, is exclusively in the personal representative.

**§560:3-711 Powers of personal representatives; in general.**

Until termination of appointment a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate. This power may be exercised without notice, hearing, or order of court.

**§560:3-712 Improper exercise of power; breach of fiduciary duty.**

If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of fiduciary duty to the same extent as a trustee of an express trust. The rights of purchasers and others dealing with a personal representative shall be determined as provided in sections 560:3-713 and 560:3-714.

**§560:3-713 Sale, encumbrance, or transaction involving conflict of interest; voidable; exceptions.**

Any sale or encumbrance to the personal representative, the personal representative's spouse, agent, or attorney, or any corporation or trust in which the personal representative has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest on the part of the

personal representative, is voidable by any person interested in the estate except one who has consented after fair disclosure, unless:

- (1) The will or a contract entered into by the decedent expressly authorized the transaction; or
- (2) The transaction is approved by the court after notice to interested persons.

**§560:3-714 Persons dealing with personal representative; protection.** A person who in good faith either assists a personal representative or deals with the personal representative for value is protected as if the personal representative properly exercised the personal representative's power. The fact that a person knowingly deals with a personal representative does not alone require the person to inquire into the existence of a power or the propriety of its exercise. Except for restrictions on powers of supervised personal representatives which are endorsed on letters as provided in section 560:3-504, no provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof. A person is not bound to see to the proper application of estate assets paid or delivered to a personal representative. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters, including a case in which the alleged decedent is found to be alive. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

**§560:3-715 Transactions authorized for personal representatives; exceptions.** Except as restricted or otherwise provided by the will or by an order in a formal proceeding or by sections 531-28.5 and 531-29, and subject to the priorities stated in section 560:3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

- (1) Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;
- (2) Receive assets from fiduciaries, or other sources;
- (3) Perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:
  - (A) Execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or
  - (B) Deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;
- (4) Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;
- (5) If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in



- federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments which would be reasonable for use by trustees generally;
- (6) Acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;
  - (7) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;
  - (8) Subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;
  - (9) Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;
  - (10) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
  - (11) Abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the State;
  - (12) Vote stocks or other securities in person or by general or limited proxy;
  - (13) Pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;
  - (14) Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;
  - (15) Insure the assets of the estate against damage, loss and liability and the personal representative's against liability as to third persons;
  - (16) Borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;
  - (17) Effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, the personal representative, in lieu of foreclosure, may accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;
  - (18) Pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;
  - (19) Sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
  - (20) Allocate items of income or expense to either estate income or principal, as permitted or provided by law;
  - (21) Employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of administrative duties; act without independent investigation upon their

- recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;
- (22) Prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of duties;
  - (23) Sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances;
  - (24) Continue any unincorporated business or venture in which the decedent was engaged at the time of the decedent's death:
    - (A) In the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will;
    - (B) In the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or
    - (C) Throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;
  - (25) Incorporate any business or venture in which the decedent was engaged at the time of the decedent's death;
  - (26) Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;
  - (27) Satisfy and settle claims and distribute the estate as provided in this chapter.

**§560:3-716 Powers and duties of successor personal representative.** A successor personal representative has the same power and duty as the original personal representative to complete the administration and distribution of the estate, as expeditiously as possible, but the successor personal representative shall not exercise any power expressly made personal to the executor named in the will.

**§560:3-717 Co-representatives; when joint action required.** If two or more persons are appointed co-representatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any co-representative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, or when a co-representative has been delegated to act for the others. Persons dealing with a co-representative if actually unaware that another has been appointed to serve or if advised by the personal representative with whom they deal that the personal representative has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

**§560:3-718 Powers of surviving personal representative.** Unless the terms of the will otherwise provide, every power exercisable by personal co-representatives may be exercised by the one or more remaining after the appointment of one or more is terminated, and if one of two or more nominated as co-executors is not appointed, those appointed may exercise all the powers incident to the office.

**§560:3-719 Compensation of personal representative.** A personal representative is entitled to reasonable compensation for the personal representative's services. If a will provides for compensation of the personal representative and there is no contract with the decedent regarding compensation, the personal representative may renounce the provision before qualifying and be entitled to reasonable compensation. A personal representative also may renounce the personal representative's right to all or any part of the compensation. A written renunciation of fee may be filed with the court.

**§560:3-720 Expenses in estate litigation.** If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith, whether successful or not that person is entitled to receive from the estate that person's necessary expenses and disbursements including reasonable attorneys' fees incurred.

**§560:3-721 Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.** After notice to all interested persons or on petition of an interested person or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for the personal representative's own services, may be reviewed by the court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

## PART 8. CREDITORS' CLAIMS

**§560:3-801 Notice to creditors.** (a) Unless notice has already been given under this section, a person applying or petitioning for appointment of a personal representative or probate of a will or declaration of an intestacy may publish a notice to creditors once a week for three successive weeks in a newspaper of general circulation in the judicial circuit in which the application or petition is filed announcing the person's application or petition and the name and address of the person nominated as personal representative, if any, and notifying creditors of the estate to present their claims no later than four months after the date of the first publication of the notice or be forever barred. The notice may be combined with any published notice of the pendency of the probate proceedings.

(b) After appointment the personal representative may give written notice by mail or other delivery to each known creditor, notifying the creditor to present that creditor's claim within four months after the published notice, if given as provided in subsection (a), or within sixty days after the mailing or other delivery of the notice, whichever is later, or be forever barred. Written notice must be the notice described in subsection (a) above or a similar notice.

(c) The personal representative shall undertake reasonable review of the decedent's records to ascertain the decedent's creditors.

(d) The personal representative is not liable to a creditor or to a successor of the decedent for giving or failing to give notice under this section.

(e) If a person other than the original nominee is appointed personal representative, the original nominee or any other person receiving claims shall promptly deliver all claims to the person who is appointed. Failure to deliver by the original nominee shall render the original nominee liable for any damages suffered by the claimants.

(f) The trustee or successor trustee of any trust created by the decedent may publish a notice to creditors once a week for three successive weeks in a newspaper of general circulation in the judicial circuit in which either:

- (1) The decedent was domiciled; or
- (2) An application or petition for appointment of personal representative is filed announcing the trustee's name and address, and notifying creditors of the decedent to present their claims to the trustee within four months after the date of the first publication of the notice or be forever barred.

The notice may be combined with the published notice of the pendency of any probate or appointment proceedings.

**§560:3-802 Statutes of limitations.** (a) Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim barred by a statute of limitations at the time of the decedent's death may be allowed or paid.

(b) The running of a statute of limitations measured from an event other than death or the giving of notice to creditors is suspended for four months after the decedent's death, but resumes thereafter as to claims not barred by other sections.

(c) For purposes of a statute of limitations, the presentation of a claim pursuant to section 560:3-804 is equivalent to commencement of a proceeding on the claim.

**§560:3-803 Limitations on presentation of claims.** (a) All claims against either a decedent or a decedent's estate which arose before the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute of limitations or non-claim statute, are barred against the estate, the personal representative, the decedent's trustee and the heirs and devisees of the decedent, unless presented within the earlier of the following:

- (1) No later than:
  - (A) Four months after the date of the first publication of notice to creditors if notice is given in compliance with section 560:3-801(a); or
  - (B) Sixty days after the mailing or other delivery of written notice, as provided in section 560:3-801(b); whichever period (A) or (B) expires later;
- or
- (2) Within eighteen months after the decedent's death, if notice to creditors has not been published as provided in section 560:3-801(a) or delivered as provided in section 560:3-801(b).

(b) A claim described in subsection (a) which is barred by the non-claim statute of the decedent's domicile before the giving of notice to creditors in this State is barred in this State.

(c) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, the decedent's trustee, and the heirs and devisees of the decedent, unless presented as follows:

- (1) A claim based on a contract with the personal representative or trustee, within four months after performance by the personal representative or trustee is due; or
- (2) Any other claim, within the later of four months after it arises, or the time specified in subsection(a)(2).
- (d) Nothing in this section affects or prevents:
  - (1) Any proceeding to enforce any mortgage, pledge, lien, or other secured interest upon property of the estate;
  - (2) To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative or the decedent's trustee for which the trustee is protected by liability insurance; or
  - (3) Collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or trustee or by the attorney or accountant for the personal representative of the estate or the decedent's trustee.

**§560:3-804 Manner of presentation of claims.** Claims against a decedent's estate may be presented as follows:

- (1) The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made;
- (2) The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction, to obtain payment of the claimant's claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of the decedent's death;
- (3) If a claim is presented under subsection (1), no proceeding thereon may be commenced more than sixty days after the personal representative has failed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the sixty-day period, or to avoid injustice the court, on petition, may order an extension of the sixty-day period, but in no event shall the extension run beyond the applicable statute of limitations.

**§560:3-805 Classification of claims.** (a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

- (1) Costs and expenses of administration;
- (2) Reasonable funeral expenses;
- (3) Debts and taxes with preference under federal law;

- (4) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent;
- (5) Debts and taxes with preference under other laws of this State; and
- (6) All other claims.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

**§560:3-806 Allowance of claims.** (a) As to claims presented in the manner described in section 560:3-804 within the time limit prescribed in section 560:3-803, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes the decision concerning the claim, the personal representative shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on the claimant's claim for sixty days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

(b) After allowing or disallowing a claim the personal representative may change the allowance or disallowance as hereafter provided. The personal representative may prior to payment change the allowance to a disallowance in whole or in part, but not after allowance by a court order or judgment or an order directing payment of the claim. The personal representative shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided in subsection (a). The personal representative may change a disallowance to an allowance, in whole or in part, until it is barred under subsection (a); after it is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.

(c) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection (a). Notice in this proceeding shall be given to the claimant, the personal representative and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

(d) A judgment in a proceeding in another court against a personal representative to allow a claim against a decedent's estate is an allowance of the claim.

(e) Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

**§560:3-807 Payment of claims.** (a) Upon the expiration of the earlier of the time limitations provided in section 560:3-803 for the presentation of claims, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family and support allowances, for claims already presented that have not yet been allowed or

whose allowance has been appealed, and for unbarred claims that may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid may secure an order directing the personal representative to pay the claim to the extent funds of the estate are available to pay it.

(b) The personal representative at any time may pay any just claim that has not been barred, with or without formal presentation, but is personally liable to any other claimant whose claim is allowed and who is injured by its payment if:

- (1) Payment was made before the expiration of the time limit stated in subsection (a) and the personal representative failed to require the payee to give adequate security for the refund of any of the payment necessary to pay other claimants; or
- (2) Payment was made, due to negligence or willful fault of the personal representative, in such manner as to deprive the injured claimant of priority.

**§560:3-808 Individual liability of personal representative.** (a) Unless otherwise provided in the contract, a personal representative is not individually liable on a contract properly entered into in the personal representative's fiduciary capacity in the course of administration of the estate unless the personal representative fails to reveal the representative's capacity and identify the estate in the contract.

(b) A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if the personal representative is personally at fault.

(c) Claims based on contracts entered into by a personal representative in the personal representative's fiduciary capacity, on obligations arising from ownership or control of the estate or on torts committed in the course of estate administration may be asserted against the estate by proceeding against the personal representative in the personal representative's fiduciary capacity, whether or not the personal representative is individually liable therefor.

(d) Issues of liability as between the estate and the personal representative individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.

**§560:3-809 Secured claims.** Payment of a secured claim is upon the basis of the amount allowed if the creditor surrenders the creditor's security; otherwise payment is upon the basis of one of the following:

- (1) If the creditor exhausts the creditor's security before receiving payment, unless precluded by other law upon the amount of the claim allowed less the fair value of the security; or
- (2) If the creditor does not have the right to exhaust the security or has not done so, upon the amount of the claim allowed less the value of the security determined by converting it into money according to the terms of the agreement pursuant to which the security was delivered to the creditor, or by the creditor and personal representative by agreement, arbitration, compromise or litigation.

**§560:3-810 Claims not due and contingent or unliquidated claims.** (a) If a claim which will become due at a future time or a contingent or unliquidated claim becomes due or certain before the distribution of the estate, and if the claim has been allowed or established by a proceeding, it is paid in the same manner as presently due and absolute claims of the same class.

(b) In other cases the personal representative or, on petition of the personal representative or the claimant in a special proceeding for the purpose, the court may provide for payment as follows:

- (1) If the claimant consents, the claimant may be paid the present or agreed value of the claim, taking any uncertainty into account; and
- (2) Arrangement for future payment, or possible payment, on the happening of the contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a bond or security from a distributee, or otherwise.

**§560:3-811 Counterclaims.** In allowing a claim the personal representative may deduct any counterclaim which the estate has against the claimant. In determining a claim against an estate a court shall reduce the amount allowed by the amount of any counterclaims and, if the counterclaims exceed the claim, render a judgment against the claimant in the amount of the excess. A counterclaim, liquidated or unliquidated, may arise from a transaction other than that upon which the claim is based. A counterclaim may give rise to relief exceeding in amount or different in kind from that sought in the claim.

**§560:3-812 Execution and levies prohibited.** No execution may issue upon nor may any levy be made against any property of the estate under any judgment against a decedent or a personal representative, but this section shall not be construed to prevent the enforcement of mortgages, pledges or liens upon real or personal property in an appropriate proceeding.

**§560:3-813 Compromise of claims.** When a claim against the estate has been presented in any manner, the personal representative, if it appears for the best interest of the estate, may compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

**§560:3-814 Encumbered assets.** If any assets of the estate are encumbered by mortgage, pledge, lien, or other security interest, the personal representative may pay the encumbrance or any part thereof, renew or extend any obligation secured by the encumbrance or convey or transfer the assets to the creditor in satisfaction of the creditor's lien, in whole or in part, whether or not the holder of the encumbrance has presented a claim, if it appears to be for the best interest of the estate. Payment of an encumbrance does not increase the share of the distributee entitled to the encumbered assets unless the distributee is entitled to exoneration.

**§560:3-815 Administration in more than one state; duty of personal representative.** (a) All assets of estates being administered in this State are subject to all claims, allowances and charges existing or established against the personal representative wherever appointed.

(b) If the estate either in this State or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances and charges, each claimant whose claim has been allowed either in this State or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of that claimant's claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this State, the creditor so benefitted is to receive dividends from local assets only upon the balance of the creditor's claim after deducting the amount of the benefit.

(c) In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being



administered separately and this State is not the state of the decedent's last domicile, the claims allowed in this State shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this State the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in this State is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this State from assets in other jurisdictions.

**§560:3-816 Final distribution to domiciliary representative.** The estate of a non-resident decedent being administered by a personal representative appointed in this State, if there is a personal representative of the decedent's domicile willing to receive it, shall be distributed to the domiciliary personal representative for the benefit of the successors of the decedent unless:

- (1) By virtue of the decedent's will, if any, and applicable choice of law rules, the successors are identified pursuant to the local law of this State without reference to the local law of the decedent's domicile;
- (2) The personal representative of this State, after reasonable inquiry, is unaware of the existence or identity of a domiciliary personal representative; or
- (3) The court orders otherwise in a proceeding for a closing order under section 560:3-1001 or incident to the closing of a supervised administration.

In other cases, distribution of the estate of a decedent shall be made in accordance with the other parts of this article.

## PART 9. SPECIAL PROVISIONS RELATING TO DISTRIBUTION

**§560:3-901 Successors' rights if no administration.** In the absence of administration, the heirs and devisees are entitled to the estate in accordance with the terms of a probated will or the laws of intestate succession. Devisees may establish title by the probated will to devised property. Persons entitled to property by homestead allowance, exemption or intestacy may establish title thereto by proof of the decedent's ownership, decedent's death, and their relationship to the decedent. Successors take subject to all charges incident to administration, including the claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption.

**§560:3-902 Distribution; order in which assets appropriated; abatement.** (a) Except as provided in subsection (b) and except as may otherwise be provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order:

- (1) Property not disposed of by the will;
- (2) Residuary devisees;
- (3) General devisees;
- (4) Specific devisees.

For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(b) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (a), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(c) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

**§560:3-903 Right of retainer.** The amount of a non-contingent indebtedness of a successor to the estate if due, or its present value if not due, shall be offset against the successor's interest; but the successor has the benefit of any defense which would be available to the successor in a direct proceeding for recovery of the debt.

**§560:3-904 Interest on general pecuniary devise.** General pecuniary devises bear interest at the legal rate beginning one year after the first appointment of a personal representative until payment, unless a contrary intent is indicated by the will.

**§560:3-905 Penalty clause for contest.** A provision in a will purporting to penalize any interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

**§560:3-906 Distribution in kind; valuation; method.** (a) Unless a contrary intention is indicated by the will, the distributable assets of a decedent's estate shall be distributed in kind to the extent possible through application of the following provisions:

- (1) A specific devisee is entitled to distribution of the thing devised to that person, and a spouse or child who has selected particular assets of an estate as provided in section 560:2-402 shall receive the items selected;
- (2) Any homestead or family allowance or devise of a stated sum of money may be satisfied in kind provided:
  - (A) The person entitled to the payment has not demanded payment in cash;
  - (B) The property distributed in kind is valued at fair market value as of the date of its distribution; and
  - (C) No residuary devisee has requested that the asset in question remain a part of the residue of the estate;
- (3) For the purpose of valuation under paragraph (2) securities regularly traded on recognized exchanges, if distributed in kind, are valued at the price for the last sale of like securities traded on the business day prior to distribution, or if there was no sale on that day, at the median between amounts bid and offered at the close of that day. Assets consisting of sums owed the decedent or the estate by solvent debtors as to which there is no known dispute or defense are valued at the sum due with accrued interest or discounted to the date of distribution. For assets which do not have readily ascertainable values, a valuation as of a date not more than thirty days prior to the date of distribution, if otherwise reasonable, controls. For purposes of facilitating distribution, the personal representative may ascertain the value of the assets as of the time of the proposed distribution in any reasonable way, including the employment of qualified appraisers, even if the assets may have been previously appraised;

(4) The residuary estate shall be distributed in any equitable manner.

(b) After the probable charges against the estate are known, the personal representative may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The right of any distributee to object to the proposed distribution on the basis of the kind or value of asset the distributee is to receive, if not waived earlier in writing, terminates if the distributee fails to object in writing received by the personal representative within thirty days after mailing or delivery of the proposal.

**§560:3-907 Distribution in kind; evidence.** If distribution in kind is made, the personal representative shall execute an instrument or deed of distribution assigning, transferring or releasing the assets to the distributee as evidence of the distributee's title to the property.

**§560:3-908 Distribution; right or title of distributee.** Proof that a distributee has received an instrument or deed of distribution of assets in kind, or payment in distribution, from a personal representative, is conclusive evidence that the distributee has succeeded to the interest of the estate in the distributed assets, as against all persons interested in the estate, except that the personal representative may recover the assets or their value if the distribution was improper.

**§560:3-909 Improper distribution; liability of distributee.** Unless the distribution or payment no longer can be questioned because of adjudication, estoppel, or limitation, a distributee of property improperly distributed or paid, or a claimant who was improperly paid, is liable to return the property improperly received and its income since distribution if the distributee or claimant has the property. If the distributee or claimant does not have the property, then the distributee or claimant is liable to return the value as of the date of disposition of the property improperly received and its income and gain received by that person.

**§560:3-910 Purchasers from distributees protected.** If property distributed in kind or a security interest therein is acquired for value by a purchaser from or lender to a distributee who has received an instrument or deed of distribution from the personal representative, or is so acquired by a purchaser from or lender to a transferee from such distributee, the purchaser or lender takes title free of rights of any interested person in the estate and incurs no personal liability to the estate, or to any interested person, whether or not the distribution was proper or supported by court order or the authority of the personal representative was terminated before execution of the instrument or deed. This section protects a purchaser from or lender to a distributee who, as personal representative, has executed a deed of distribution to the distributee's self, as well as a purchaser from or lender to any other distributee or the distributee's transferee. To be protected under this provision, a purchaser or lender need not inquire whether a personal representative acted properly in making the distribution in kind, even if the personal representative and the distributee are the same person, or whether the authority of the personal representative had terminated before the distribution. Any recorded instrument described in this section on which a state documentary fee is noted pursuant to chapter 247 shall be prima facie evidence that such transfer was made for value.

**§560:3-911 Partition for purpose of distribution.** When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the court prior to the formal or informal closing of the estate, to make partition. After notice to the interested heirs or devisees, the court shall

partition the property in the same manner as provided by the law for civil actions of partition. The court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot conveniently be allotted to any one party.

**§560:3-912 Private agreements among successors to decedent binding on personal representative.** Subject to the rights of creditors and taxing authorities, competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent, or under the laws of intestacy, in any way that they provide in a written contract executed by all who are affected by its provisions. The personal representative shall abide by the terms of the agreement subject to the personal representative's obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of the personal representative's office for the benefit of any successors of the decedent who are not parties. Personal representatives of decedents' estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.

**§560:3-913 Distributions to trustee.** (a) Before distributing to a trustee, the personal representative may require that the trust be registered if the State in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in section 560:7-303.

(b) If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if the personal representative apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and the personal representative may withhold distribution until the court has acted.

(c) No inference of negligence on the part of the personal representative shall be drawn from the personal representative's failure to exercise the authority conferred by subsections (a) and (b).

**§560:3-914 Disposition of unclaimed assets.** If an heir, devisee, or claimant cannot be found, the personal representative shall distribute the share of the missing person, whether realty or personally, to that person's conservator, if any, otherwise to the State to become a part of the treasury of the State under chapters 523A and 665, as appropriate.

**§560:3-915 Distribution to person under disability.** (a) A personal representative may discharge the obligation to distribute to any person under legal disability by distributing in a manner expressly provided in the will.

(b) Unless contrary to an express provision in the will, the personal representative may discharge the obligation to distribute to a minor or person under other disability as authorized by section 560:5-101 or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

(c) If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to:

- (1) An attorney in fact who has authority under a power of attorney to receive property for that person; or
- (2) The spouse, parent, or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding

\$10,000 a year, or property not exceeding \$10,000 in value, unless the court authorizes a larger amount or greater value.

Persons receiving money or property for the disabled person are obligated to apply the money or property to the support of that person, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or property distributed pursuant to this subsection.

**§560:3-916 Apportionment of estate taxes.** (a) For purposes of this section:

“Estate” means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this State.

“Fiduciary” means personal representative or trustee.

“Person” means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency.

“Person interested in the estate” means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent’s estate. It includes a personal representative, conservator, and trustee.

“State” means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

“Tax” means the federal estate tax and the additional inheritance tax imposed by Hawaii and interest and penalties imposed in addition to the tax.

(b) Except as provided in subsection (i) and, unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If the decedent’s will directs a method of apportionment of tax different from the method described in this chapter, the method described in the will controls.

- (c) (1) The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose may determine the apportionment of the tax;
- (2) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (b), because of special circumstances, it may direct apportionment thereof in the manner it finds equitable;
- (3) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest;
- (4) In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this chapter the determination of the court in respect thereto shall be prima facie correct.
- (d) (1) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to that person, the amount of tax attributable to that person’s interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate

amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this chapter;

- (2) If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.
- (e) (1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax;
- (2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal;
- (3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or the decedent's estate inures to the proportionate benefit of all persons liable to apportionment;
- (4) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax;
- (5) To the extent that property passing to or in trust for a surviving spouse or any charitable, public or similar purpose is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (b) hereof, and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the Internal Revenue Code of 1986, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

(f) No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

(g) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the three-month period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was

collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

(h) A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this State and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this State or who owns property in this State subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is *prima facie* correct.

(i) If the liabilities of persons interested in the estate as prescribed by this chapter differ from those which result under the federal estate tax law, the liabilities imposed by the federal law will control and the balance of this section shall apply as if the resulting liabilities had been prescribed herein.

## PART 10. CLOSING ESTATES

**§560:3-1001 Formal proceedings terminating administration; testate or intestate; order of general protection.** (a) A personal representative or any interested person may petition for an order of complete settlement of the estate. The personal representative may petition at any time, and any other interested person may petition after one year from the appointment of the original personal representative except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to determine testacy, if not previously determined, to consider the final account or compel or approve an accounting and distribution, to construe any will or determine heirs and adjudicate the final settlement and distribution of the estate. After notice to all interested persons and hearing the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any interested person.

(b) If one or more heirs or devisees were omitted as parties in, or were not given notice of, a previous formal testacy proceeding, the court, on proper petition for an order of complete settlement of the estate under this section, and after notice to the omitted or unnotified persons and other interested parties determined to be interested on the assumption that the previous order concerning testacy is conclusive as to those given notice of the earlier proceeding, may determine testacy as it affects the omitted persons and confirm or alter the previous order of testacy as it affects all interested persons as appropriate in the light of the new proofs. In the absence of objection by an omitted or unnotified person, evidence received in the original testacy proceeding shall constitute *prima facie* proof of due execution of any will previously admitted to probate, or of the fact that the decedent left no valid will if the prior proceedings determined this fact.

**§560:3-1002 Formal proceedings terminating testate administration; order construing will without adjudicating testacy.** A personal representative administering an estate under an informally probated will or any devisee under an informally probated will may petition for an order of settlement of the estate which will not adjudicate the testacy status of the decedent. The personal representative may petition at any time, and a devisee may petition after one year, from the

appointment of the original personal representative, except that no petition under this section may be entertained until the time for presenting claims which arose prior to the death of the decedent has expired. The petition may request the court to consider the final account or compel or approve an accounting and distribution, to construe the will and adjudicate final settlement and distribution of the estate. After notice to all devisees and the personal representative and hearing, the court may enter an order or orders, on appropriate conditions, determining the persons entitled to distribution of the estate under the will, and, as circumstances require, approving settlement and directing or approving distribution of the estate and discharging the personal representative from further claim or demand of any devisee who is a party to the proceeding and those the devisee represents. If it appears that a part of the estate is intestate, the proceedings shall be dismissed or amendments made to meet the provisions of section 560:3-1001.

**§560:3-1003 Closing estates; by sworn statement of personal representative.** (a) Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court no earlier than six months after the date of original appointment of a general personal representative for the estate, a verified statement stating that the personal representatives or a previous personal representative, has:

- (1) Determined that the time limited for presentation of creditors' claims has expired;
- (2) Fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims that were presented, expenses of administration and estate, inheritance and other death taxes, except as specified in the statement, and that the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement must state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or state in detail other arrangements that have been made to accommodate outstanding liabilities; and
- (3) Sent a copy of the statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the personal representative's administration to the distributees whose interests are affected thereby.

(b) If no proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

**§560:3-1004 Liability of distributees to claimants.** After assets of an estate have been distributed and subject to section 560:3-1006, an undischarged claim not barred may be prosecuted in a proceeding against one or more distributees. No distributee shall be liable to claimants for amounts received as exempt property, homestead or family allowances, or for amounts in excess of the value of that person's distribution as of the time of distribution. As between distributees, each shall bear the cost of satisfaction of unbarred claims as if the claim had been satisfied in the course of administration. Any distributee who shall have failed to notify other distributees of the demand made upon that distributee by the claimant in sufficient time to permit them to join in any proceeding in which the claim was asserted against that distributee loses the right of contribution against other distributees.



**§560:3-1005 Limitations on proceedings against personal representative.** Unless previously barred by adjudication and except as provided in the closing statement, the rights of successors and of creditors whose claims have not otherwise been barred against the personal representative for breach of fiduciary duty are barred unless a proceeding to assert the same is commenced within six months after the filing of the closing statement. The rights thus barred do not include rights to recover from a personal representative for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate.

**§560:3-1006 Limitations on actions and proceedings against distributees.** Unless previously adjudicated in a formal testacy proceeding or in a proceeding settling the accounts of a personal representative or otherwise barred, the claim of a claimant to recover from a distributee who is liable to pay the claim, and the right of an heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or its value from any distributee is forever barred at the later of three years after the decedent's death or one year after the time of its distribution thereof, but all claims of creditors of the decedent, are barred one year after the decedent's death. This section does not bar an action to recover property or value received as a result of fraud.

**§560:3-1007 Certificate discharging liens securing fiduciary performance.** After the appointment has terminated, the personal representative, the personal representative's sureties, or any successor of either, upon the filing of a verified application showing, so far as is known by the applicant, that no action concerning the estate is pending in any court, is entitled to receive a certificate from the registrar that the personal representative appears to have fully administered the estate in question. The certificate evidences discharge of any lien on any property given to secure the obligation of the personal representative in lieu of bond or any surety, but does not preclude action against the personal representative or the surety.

**§560:3-1008 Subsequent administration.** If other property of the estate is discovered after an estate has been settled and the personal representative discharged or after one year after a closing statement has been filed, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently discovered estate. If a new appointment is made, unless the court orders otherwise, the provisions of this chapter apply as appropriate; but no claim previously barred may be asserted in the subsequent administration.

## PART 11. COMPROMISE OF CONTROVERSIES

**§560:3-1101 Effect of approval of agreements involving trusts, inalienable interests, or interests of third persons.** A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, the construction, validity, or effect of any governing instrument, the rights or interests in the estate of the decedent, of any successor, or the administration of the estate, if approved in a formal proceeding in the court for that purpose, is binding on all the parties thereto including those unborn, unascertained or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

**§560:3-1102 Procedure for securing court approval of compromise.** The procedure for securing court approval of a compromise is as follows:

- (1) The terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise. Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained;
- (2) Any interested person, including the personal representative, if any, or a trustee, then may submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected testamentary trust, and other fiduciaries and representatives;
- (3) After notice to all interested persons or their representatives, including the personal representative of any estate and all affected trustees of trusts, the court, if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement. Minor children represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

## PART 12. COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE FOR SMALL ESTATES

**§560:3-1201 Collection of personal property by affidavit.** (a) Any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, chose in action, or other intangible personal property belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing the debt, obligation, stock, chose in action, or other intangible personal property to a person or persons claimed to be the successor or successors of the decedent or to the department of human services where the department has paid for the decedent's burial pursuant to section 346-15, upon being presented a death certificate for the decedent and an affidavit made by or on behalf of the claimed successor or successors or the department of human services stating that:

- (1) The gross value of the decedent's estate in this State does not exceed \$60,000; except that any motor vehicles registered in the decedent's name may be transferred regardless of value pursuant to this section;
- (2) No application or petition for the appointment of a personal representative is pending or has been granted in this State; and
- (3) (A) The claimed successor or successors are entitled to the property and explaining the relationship of the claimed successor or successors to the decedent; or  
(B) The department of human services has paid for the decedent's burial.

The affidavit of the department of human services shall have priority over any other claim presented pursuant to this section.

(b) Upon presentation of an affidavit meeting the requirements of subsection (a), any person having legal authority to issue a certificate or other evidence of ownership of tangible personal property or a debt, obligation, stock, chose in action, or other intangible personal property belonging to the decedent shall change the

registered ownership of the decedent's interest in the property from the decedent to the decedent's claimed successor or successors and shall issue a certificate or other document evidencing the ownership of the property by the decedent's claimed successor or successors.

**§560:3-1202 Effect of affidavit.** The person paying, delivering, transferring, or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if that person dealt with a personal representative of the decedent. That person is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

**§560:3-1203 Small estates; summary administration procedure.** If it appears from the inventory and appraisal that the value of the entire estate, less liens and encumbrances, does not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable and necessary medical and hospital expenses of the last illness of the decedent, the personal representative, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled thereto and file a closing statement as provided in section 560:3-1204.

**§560:3-1204 Small estates; closing by sworn statement of personal representative.** (a) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative may close an estate administered under the summary procedures of section 560:3-1203 by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

- (1) To the best knowledge of the personal representative, the value of the entire estate, less liens and encumbrances, did not exceed homestead allowance, exempt property, family allowance, costs and expenses of administration, reasonable funeral expenses, and reasonable, necessary medical and hospital expenses of the last illness of the decedent;
- (2) The personal representative has fully administered the estate by disbursing and distributing it to the persons entitled thereto; and
- (3) The personal representative has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of the administration to the distributees whose interests are affected.

(b) If no actions or proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

(c) A closing statement filed under this section has the same effect as one filed under section 560:3-1003.

**§560:3-1205 Estates of \$60,000 or less; clerk of court to administer.** If a person dies leaving property in this State of a total value not exceeding \$60,000, and a personal representative of the estate has not been appointed in the State, the clerk

of the court of the judicial circuit in which the decedent was residing or domiciled at the time of the decedent's death or left property may, upon the verified petition of the clerk or of any interested person, obtain an order authorizing the clerk to administer the estate, and, as the personal representative, the clerk shall collect and receive the property and administer the same. The order may be made without notice or hearing, at the discretion of the court. Except as otherwise specifically required or authorized by law or where the clerk may be interested as an heir, or devisee, no clerk of any court shall act as personal representative of any estate where the value of the same is in excess of \$60,000. No fees shall be allowed the clerk, except as set forth in section 560:3-1211.

**§560:3-1206 Publication by clerk of appointment as personal representative; notice to creditors, heirs, etc.** (a) If the estate has a total value of \$10,000 or less, upon such appointment the clerk shall publish the fact by posting a notice thereof at the front entrance of the court house of the judicial circuit and by advertising the notice in the English language at least once in a newspaper of general circulation in the judicial circuit, the notice to state briefly that all creditors of the deceased must file with the clerk duly verified claims within sixty days from the date of publication, and that all persons claiming to be heirs of the estate are requested to file with the clerk notice of such claims within the period. The court may direct that the advertising of the notice in a newspaper need not be made if it deems the same unnecessary.

(b) If the estate has a total value in excess of \$10,000, the content and method of giving notice, both of the pendency of the action and of all other acts for which notice is required, shall be as provided for informal probates in article III, part 3.

**§560:3-1207 Presentation of claims of creditors.** All creditors of the decedent shall present their claims, duly verified under oath, to the clerk within the time specified in the notice.

**§560:3-1208 Claims barred when.** All claims of creditors not filed within the prescribed period from the date of the first publication are forever barred.

**§560:3-1209 Duties of clerk and distribution.** The clerk shall make diligent effort to ascertain the names and whereabouts of the heirs, or the whereabouts of the devisees of the decedent and present evidence relating thereto to the court having jurisdiction of the proceedings. After the expiration of four months, in the case of an estate valued in excess of \$10,000, or sixty days, in the case of an estate valued at \$10,000 or less, after the first publication, the clerk shall pay or distribute the money, funds, or property of the estate in the order specified in section 560:3-805, including any allowances and exempt property under part 4 of article II authorized by the court, and the excess, if any, to or among such persons as may be found by the court to be persons entitled thereto as distributees.

**§560:3-1210 Undistributed proceeds or balances, disposition.** When any balance remains in the hands of the clerk, after payment in the order specified in section 560:3-805, and no heirs or devisees of the decedent, entitled to the balance, can be located after reasonable search and inquiry, the clerk, after the expiration of one year after the first publication, shall report the fact to the court, which shall forthwith enter an order forwarding such property to the state director of finance, and the clerk thereupon shall immediately deposit the money or funds, or any balance, with the director for disposition as provided in chapter 523A. The director at any time may authorize the payment out of the general funds of the State of any amount so forwarded to any person who establishes to the satisfaction of the director that the

person is legally entitled thereto as an heir or devisee of the decedent, and the person shall be entitled to receive the amount thereof out of any moneys in the treasury not otherwise appropriated, upon warrant drawn by the state comptroller.

**§560:3-1211 Exemption from costs.** All proceedings under this part shall be free from all costs of court, except that the clerk may charge the actual expenses for advertising the notice specified in section 560:3-1206, the advertising, posting, or service fees required in carrying out any order of the court, including orders relating to the sale of real or personal property, and any expenses reasonably necessary for the preservation, disposal, distribution, and administration of the estate, together with a fee of three per cent of the market value of the first \$60,000 in the gross estate, the fee to be paid into the treasury of the State as a government realization from any available assets of the estate; provided that if the administration is completed by another personal representative on account of the size of the estate or for any other reason, no fee shall be charged by the clerk.

**§560:3-1212 Estates of persons leaving no known relatives.** Every coroner or medical examiner who is called to investigate the death of any person leaving no known spouse, issue, parent, grandparent, or issue of grandparents over the age of majority in the State, shall take immediate charge of the decedent's personal effects and if in the discretion of the coroner the value of such personal effects is in excess of \$2,500, forthwith deliver them to the clerk of the court of the judicial circuit in which such decedent died.

If after ten days no person appears, competent to initiate appropriate probate proceedings, the clerk shall administer the estate pursuant to the provisions of this part; provided that if the decedent's estate is of a value exceeding \$60,000, the clerk shall notify the judge of the circuit having charge of the probate calendar, and shall petition for the appointment of a personal representative of such estate other than the clerk. In the meantime the clerk may take such steps as may be appropriate to preserve and conserve the real and personal property of the decedent. All expenses in connection with the taking possession, care, and conservation of the property and with such proceedings shall be proper charges against the estate of the decedent. The corporation counsel or county attorney of each county shall advise, assist, and represent as far as necessary any of such officers in the performance of any act or the institution or prosecution of any proceeding required by this section. If the decedent's estate is of a value not exceeding \$2,500 and the decedent has no known relatives or whose relatives have failed to indicate any means of disposition of the estate, then the coroner or medical examiner having custody of the property shall dispose of the property in an appropriate manner, which may be any one of the following or a combination thereof:

- (1) Where the estate consists only of money and is not in excess of \$2,500 and expenditures have been made in connection with such death, to reimburse the appropriate city and/or county office that made the disbursement to defray said expenses;
- (2) Where the estate consists of cash or personal belongings of monetary value, or both, not exceeding \$2,500, to liquidate the personal belongings and apply the proceeds, together with the cash, if the total does not exceed \$2,500, in accordance with paragraph (1);
- (3) Where the assets in the estate are of no monetary value (unsalable) and in the best judgment and discretion of the coroner or medical examiner can be used by some charitable institution, to donate the assets to whatever charitable institution is willing and able to pick up the assets in question;

- (4) Where the assets have no value whatsoever or are in such condition that, in the best judgment and discretion of the coroner or medical examiner, a charitable institution cannot use the properties, or will not receive the properties, to destroy the same in any manner the coroner or medical examiner sees fit; and
- (5) If under paragraphs (1) and (2), there are assets remaining, then the coroner or medical examiner shall forthwith forward the same to the state director of finance for disposition as provided in chapter 523A.

**§560:3-1213 Reserved.**

**§560:3-1214 Annual audit of accounts of clerk.** Any other law to the contrary notwithstanding, the comptroller of the State shall audit not less frequently than annually the accounts and transactions of the clerks of the courts in their official capacity as guardians of the property of protected persons or as personal representatives of small estates, and report the results of the audit to the judges of the respective courts.

**§560:3-1215 Prohibition on the private practice of law by attorneys for small estates.** No person who, pursuant to sections 560:3-1205 to 560:3-1214, or any of them, performs any services as or for the clerk of the first circuit court, for which the person is compensated from public funds, shall engage in the private practice of law, provided that the person shall be entitled to accept fees or other compensation in connection with masterships.

## ARTICLE IV FOREIGN PERSONAL REPRESENTATIVES; ANCILLARY ADMINISTRATION

### PART 1. DEFINITIONS

**§560:4-101 Definitions.** In this article:

“Local administration” means administration by a personal representative appointed in this State pursuant to appointment proceedings described in article III.

“Local personal representative” includes any personal representative appointed in this State pursuant to appointment proceedings described in article III and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to section 560:4-205.

“Resident creditor” means a person domiciled in, or doing business in this State, who is, or could be, a claimant against an estate of a non-resident decedent.

### PART 2. POWERS OF FOREIGN PERSONAL REPRESENTATIVES

**§560:4-201 Payment of debt and delivery of property to domiciliary foreign personal representative without local administration.** At any time after the expiration of sixty days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of appointment and an affidavit made by or on behalf of the representative stating:

- (1) The date of the death of the nonresident decedent;

- (2) That no local administration, or application or petition therefor, is pending in this State; and
- (3) That the domiciliary foreign personal representative is entitled to payment or delivery.

**§560:4-202 Payment or delivery discharges.** Payment or delivery made in good faith on the basis of the proof of authority and affidavit releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

**§560:4-203 Resident creditor notice.** Payment or delivery under section 560:4-201 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

**§560:4-204 Proof of authority-bond.** If no local administration or application or petition therefor is pending in this State, a domiciliary foreign personal representative may file with a court in this State in a judicial circuit in which property belonging to the decedent is located, authenticated copies of the representative's appointment and of any official bond the representative has given.

**§560:4-205 Powers.** A domiciliary foreign personal representative who has complied with section 560:4-204 may exercise as to assets in this State all powers of a local personal representative and may maintain actions and proceedings in this State subject to any conditions imposed upon nonresident parties generally.

**§560:4-206 Power of representatives in transition.** The power of a domiciliary foreign personal representative under section 560:4-201 or 560:4-205 shall be exercised only if there is no administration or application therefor pending in this State. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under section 560:4-205, but the local court may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed the person's position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for that person in any action or proceedings in this State.

**§560:4-207 Ancillary and other local administrations; provisions governing.** In respect to a nonresident decedent, the provisions of article III of this chapter govern:

- (1) Proceedings, if any, in a court of this State for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and
- (2) The status, powers, duties, and liabilities of any local personal representative and the rights of claimants, purchasers, distributees, and others in regard to a local administration.

### PART 3. JURISDICTION OVER FOREIGN REPRESENTATIVES

**§560:4-301 Jurisdiction by act of foreign personal representative.** A foreign personal representative submits personally to the jurisdiction of the courts of this State in any proceeding relating to the estate by:

- (1) Filing authenticated copies of the foreign personal representative's appointment as provided in section 560:4-204;
- (2) Receiving payment of money or taking delivery of personal property under section 560:4-201; or
- (3) Doing any act as a personal representative in this State which would have given the State jurisdiction over that foreign personal representative as an individual.

Jurisdiction under paragraph (2) is limited to the money or value of personal property collected.

**§560:4-302 Jurisdiction by act of decedent.** In addition to jurisdiction conferred by section 560:4-301, a foreign personal representative is subject to the jurisdiction of the courts of this State to the same extent that the decedent was subject to jurisdiction immediately prior to death.

**§560:4-303 Service on foreign personal representative.** (a) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to the foreign personal representative's last reasonably ascertainable address, requesting a return receipt signed by addressee only. Notice by ordinary first class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this State on either the foreign personal representative or the decedent immediately prior to death.

(b) If service is made upon a foreign personal representative as provided in subsection (a), the foreign personal representative shall be allowed at least thirty days within which to appear or respond.

### PART 4. JUDGMENTS AND PERSONAL REPRESENTATIVE

**§560:4-401 Effect of adjudication for or against personal representative.** An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if the local personal representative were a party to the adjudication."

SECTION 2. Section 531-28.5, Hawaii Revised Statutes, is amended to read as follows:

**"[§531-28.5] Petition to sell real property.** In cases where the will of the decedent does not specifically authorize the personal representative to sell real property, a personal representative or guardian shall present to the court having jurisdiction of the estate a petition setting forth the condition of the estate, and the facts and circumstances tending to show the necessity or expediency of the sale of real property. If it appears to the court either that it is necessary or that it would be advisable and for the benefit of the estate that the real property or any part thereof be sold, and that sufficient notice of the proposed sale has been given to interested persons as defined in section [560:1-201(24)], 560:1-201, the court may authorize the personal representative or guardian to sell the real property either at private sale or at public auction on such terms as the court shall order."



SECTION 3. Section 531-29, Hawaii Revised Statutes, is amended to read as follows:

**“§531-29 Confirmation of sales of real property by personal representatives or guardians.** [Any] If required by the decedent’s will or if demanded by a devisee in a testate probate proceeding or by an heir in an intestate probate proceeding, the personal representative or the guardian selling real property of the estate shall obtain from the court an order of confirmation of the sale before making conveyance of the real property sold. The order confirming the sale shall be given upon affirmative proof that the selling price was a fair and just price for the property sold and that the sale complied with the order of the court authorizing the sale.

If a sale being presented to the court for confirmation is a private sale, the court shall require a notice of the sale to be posted in an appropriate place in the courthouse of the circuit wherein the matter is pending and also of the circuit wherein the property is located, if they are different, at least fifteen days prior to considering the confirmation, the notice to set forth a description of the property, including the tax key number, the proposed sale price including the terms of payment, a description of any encumbrances thereon, the date of the confirmation hearing and a solicitation for sealed bids thereon or any other information required by the court. The court may also require that the notice be published at least twice in a newspaper in the circuit where the property is located, the last publication to be at least fifteen days prior to considering the confirmation. If a written offer in an amount at least ten per cent more on the first \$10,000 of the selling price and five per cent more on the amount of the selling price in excess of \$10,000 is made to the court by a responsible person, who may be the original offeror, prior to the hour scheduled for the hearing of confirmation, the court upon the hearing of confirmation, shall permit the original and subsequent offerors to make a further offer, and if any new offer shall be in an amount at least five per cent more than the highest written offer made to the court, then the court shall, in such manner as it shall determine, permit the original and subsequent offerors to make additional higher offers and shall confirm the sale to the one making the highest offer acceptable to the estate finally received.

Upon the confirmation of any sale, the court may fix the compensation for the services to the estate of the personal representative or guardian, the personal representative’s or guardian’s attorney, or real estate agent securing the original offeror. In case of a sale on an increased bid made at the time of confirmation to a purchaser other than the original offeror, the court shall also fix the compensation payable by the estate to the agent, if any, producing the successful bidder, but the total compensation payable by the estate in that case shall not exceed the amount of the commission payable on the amount for which the sale is confirmed.”

SECTION 4. Section 560:6-107, Hawaii Revised Statutes, is amended to read as follows:

**“§560:6-107 Rights against multiple-party accounts.** A transfer to a survivor of a multiple-party account can be set aside, to the extent described below, in the event the assets in the hands of the personal representative of the deceased party are insufficient to pay taxes, expenses of administration, and homestead and family allowances under sections [560:2-401 and 560:2-403.] 560:2-402 and 560:2-404. A surviving party, payable-on-death payee, or beneficiary who receives payment from a multiple-party account after the death of a deceased party may, on application of the personal representative of the deceased party’s estate, the surviving spouse of the deceased party, or one acting for a dependent or minor child of the deceased party, be required to account to said personal representative for the

deceased party's net contribution to the account to the extent necessary to discharge the insufficiency described above. No proceeding to assert this right shall be commenced later than two years following the death of the deceased party. Sums recovered hereunder shall be administered as part of the decedent's estate. This section shall not affect the right of a financial institution to make payment on multiple-party accounts according to the terms thereof, or make it liable to the estate of a deceased party unless before payment either the institution has been served with process in a proceeding by the personal representative or the institution has actual knowledge that making payment will jeopardize the payment of the taxes, expenses and allowances above mentioned."

**SECTION 5. Effect and transition.** (a) The amendments made by this Act shall take effect on January 1, 1997.

(b) Except as provided elsewhere in this Act, on July 1, 1997:

- (1) The amendments made by this Act apply to any governing instruments executed by decedents dying thereafter;
- (2) The amendments made by this Act apply to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except:
  - (A) Parts 1 and 2 of Article II (relating to intestate succession and elective share) shall apply only to the estates of decedents dying after July 1, 1997; and
  - (B) To the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Act;
- (3) Every personal representative including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this Act and is subject to the duties imposed with respect to any act occurring or done thereafter;
- (4) An act done before the effective date in any proceeding and any accrued right is not impaired by this Act. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right; and
- (5) Any rule of construction or presumption provided in this Act applies to instruments executed before the effective date unless there is a clear indication of a contrary intent.

**SECTION 6.** Articles I, II, III, and IV of chapter 560, Hawaii Revised Statutes, are repealed.

**SECTION 7.** Chapter 236A, Hawaii Revised Statutes, is repealed.

**SECTION 8.** Section 531-34, Hawaii Revised Statutes, is repealed.

**SECTION 9.** Chapter 534A, Hawaii Revised Statutes, is repealed.

**SECTION 10.** Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 11. This Act shall take effect on January 1, 1997.

(Approved June 18, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 289**

S.B. NO. 2304

A Bill for an Act Relating to General Assistance.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that:

- (1) There are more than 6,000 persons in Hawaii who, by reason of physical or mental disability, are not able to provide for their personal subsistence needs but who are ineligible for the federal Supplemental Security Income Program;
- (2) If general assistance is not provided to these persons, they become extremely vulnerable to the ravages of homelessness, aggravation of their disabilities, and victimization by criminals;
- (3) The cost of providing general assistance to meet these persons' subsistence needs is less than the cost of providing housing alone through a publicly supported shelter;
- (4) The cost of one month's general assistance is less than that of providing one day of emergency medical or acute psychiatric care through the Hawaii health QUEST or other state funded program;
- (5) If the general assistance program is not maintained, the department of health will experience cost increases in the operation of its medical and psychiatric care facilities and community mental health centers;
- (6) If general assistance payments to persons with disabilities are terminated, the counties will bear costs far in excess of the cost of general assistance in the form of increased demand on county medical facilities, parks, police, and shelter facilities;
- (7) Significant savings for the general assistance program can be realized by fully staffing, completely with federal funds, the department of human services' supplemental security income disability determination unit and expediting the processing of applications for persons otherwise receiving general assistance or assistance to the aged, blind, or disabled;
- (8) Expedited processing will also save money in both the short and long term because a general assistance recipient later found eligible for Supplemental Security Income payments may be required to return the amount of general assistance received for the period the person waited for final eligibility approval; and
- (9) Recipients of general assistance are either adults who have dependent children at home or persons with disabilities which prevent them from earning enough to support themselves. As a condition of receiving assistance, both groups are required to seek employment and participate in public works projects. Persons with disabilities are required to accept vocational rehabilitation, if appropriate.

The legislature recognizes that the State is under severe fiscal pressures but also recognizes that providing general assistance to persons who might otherwise not survive, is cost-effective and responsible public policy.

SECTION 2. Section 346-71, Hawaii Revised Statutes, is amended to read as follows:

**“§346-71 General assistance.** (a) The department of human services is authorized to administer and provide public assistance to eligible persons who are disabled, [or whose primary diagnosis is substance abuse,] or have dependent children in the home not otherwise provided for under this chapter and who are unable to provide sufficient support for themselves or those dependent upon them; provided that such persons [have]:

- (1) Have first been determined ineligible for a comparable federally funded financial assistance program[, are];
- (2) Are bona fide residents of this State[, and have]; and
- (3) Have furnished to the department a social security account number for each member of the assistance unit or verification that an application was made with the Social Security Administration for a social security account number for each member of the assistance unit.

In family groups in which there are children, income and resources of both parents[, natural or adoptive,] shall be considered available for each other and the support of their children.

Persons who meet the categorical criteria for eligibility, but fail to satisfy income and resource criteria adopted by the department for eligibility under the comparable federally funded financial assistance program shall not be eligible for general assistance. The failure of any adult member of the assistance unit to comply with the requirements or conditions of general assistance shall exclude the entire assistance unit from receiving financial assistance. However, when the adult member is disqualified for not meeting the work requirement, the assistance unit shall not be disqualified if the assistance unit was formed after the failure to meet the work requirement occurred. “Assistance unit” as the term is used [herein] in this section means persons whose needs, income, and assets are considered in the financial assistance payment and their dependents.

For purposes of determining whether persons seeking assistance are bona fide residents of this State, the department of human services shall consider, but is not limited to considering, the following factors: enrollment and receipt of welfare benefits from another jurisdiction; physical presence in the State; maintenance of a place of residence in the State; the availability of furnishings and household and personal effects sufficient to lead a reasonable person to conclude that the place of residence is more than a public accommodation; qualification as to residence for purposes of voting in the State; change in vehicle operation license; vehicle registration; enrollment of children in local schools; bank accounts in this State or any other jurisdiction.

(b) A [disabled] person between eighteen and sixty-five years of age with a disability shall be eligible for general assistance for not more than [one year,] twenty-four months, if the person:

- (1) Is determined to be needy in accordance with standards established by this chapter and the rules adopted under subsection [(g);] (f);
- (2) Is unable to meet the requirements established by the Federal Supplemental Security Income Program or its successor agency; and
- (3) (A) Is unable to engage in any substantial gainful employment because of a determined and certified physical or mental [impairment.] disability. A determination and certification of physical [impairment] disability shall only be made by a licensed physician. A determination and certification of mental [impairment] disability shall be made by a licensed physician whose specialty is in psychiatry or by a licensed psychologist. The department

may require that such determination and certification be by a psychiatrist or a psychologist designated and paid by the department[.];

- (B) When a determination of mental [impairment] disability is made, the person shall accept and pursue appropriate medical treatment[. The out-patient treatment shall include a medical evaluation to eliminate the possibility that the mental impairment is due to a physical illness.] from a provider of the person's choice;
- (C) When a determination of physical [impairment] disability is made, the person shall accept and pursue appropriate medical treatment[.] from a provider of the person's choice; and
- (D) Any person, to continue to be certified as mentally or physically [impaired.] disabled, shall be reevaluated annually as provided by this section and more frequently as required by the department.

“Substantial” as the term is used herein means at least thirty hours of work per week. [“Disabled”]

“With a disability” or “having a disability” as the [term is] terms are used [herein means] in this section means a disability which extends for a period of over thirty days.

Any person determined to be eligible under this subsection may be referred to any appropriate state agency for vocational rehabilitation services and shall be required to accept the services as a further condition of eligibility for the receipt of general assistance under this section. An assistance unit shall be determined ineligible for general assistance if any adult member of the assistance unit fails to cooperate with any appropriate state agency for vocational rehabilitation services after being referred for services. Any person found eligible under this subsection may also be required to seek employment, and participate in public work projects as described in section 346-31, and in public employment projects as described in section 346-102.

[The one year eligibility under this subsection may be extended by the department pending determination of eligibility for the Federal Supplemental Security Income Program or its successor agency.]

(c) A person with dependent children in the home shall be eligible for general assistance if the person:

- (1) Is determined to be eligible in accordance with rules adopted under subsection [(g);] (f);
- (2) Is unemployed for reasons other than voluntary separation without good cause or for misconduct within twelve months prior to application; [and]
- (3) Is actively and diligently seeking gainful employment; [and]
- (4) Has not refused to accept employment when offered; [and]
- (5) Has registered and is available for work as required by section 383-29; and
- (6) (A) Has exhausted all of the person's benefits under chapter 383; provided that if the benefits of any person under chapter 383 be less than those for which the person would be eligible under this section, the person shall be eligible for supplementary general assistance; and provided further that this provision of exhaustion shall not apply to those persons not entitled by law to such benefits; or
- (B) Is employed but without sufficient income or other resources to provide sufficient support to maintain the person or those dependent upon the person consistent with the standards of this chapter.

“Children” as used in this section means persons who:

- (1) Are ineligible for and are unable to obtain aid under a federal assistance program; [and]
- (2) Are in need, and do not have sufficient income or other resources to provide health care and support to maintain a standard consistent with this chapter; [and]
- (3) Have not attained the age of eighteen years; provided that a child between the ages of eighteen and nineteen years shall be eligible for assistance under this section, if the child is a full-time student enrolled in a public or private secondary school, or equivalent level of vocational or technical school; and further provided that the child is expected to complete the program of the secondary school or vocational or technical school before reaching age nineteen; and
- (4) Are living in a home with their father, mother, [grandfather, grandmother, brother, sister, stepfather, stepmother, uncle, aunt, first cousin, nephew, niece,] or hanai parents in a place of residence maintained by such relative as the relative’s own home.

A child for the purposes of this section does not include an unborn child or fetus.

[(d) A person between the ages of eighteen and sixty-five years of age whose primary diagnosis is substance abuse shall be eligible for assistance for a period not to exceed six months if the person:

- (1) Is determined to be needy in accordance with standards established by this chapter and the rules adopted under subsection (g);
- (2) Is unable to meet the requirements established by the Federal Supplemental Security Income Program or its successor agency; and
- (3) (A) Is unable to engage in any substantial gainful employment because of a determined and certified diagnosis of substance abuse. A determination of substance abuse shall only be made by a licensed physician or a licensed psychologist. The department may require that such determination and certification be by a physician or a psychologist designated and paid by the department;
- (B) When a determination of substance abuse is made, the person shall accept and pursue medical treatment;
- (C) Any person, to continue to be certified as a substance abuser, shall be reevaluated as provided by the department.

“Substantial” as the term is used in this subsection means at least thirty hours of work per week.

Any person determined to be eligible under this subsection may be referred to any appropriate state agency for vocational rehabilitation services and shall be required to accept the services as a further condition of eligibility for the receipt of general assistance under this section. An assistance unit shall be determined ineligible for general assistance if any adult member of the assistance unit fails to cooperate with any appropriate state agency for vocational rehabilitation services after being referred for services. Any person found eligible under this subsection may also be required to seek employment, and participate in public work projects as described in section 346-31, and in public employment projects as described in section 346-102.

(e)] (d) The department shall further require in addition to the conditions and requirements stated in [subsections] subsection (c) [and (d)], that persons who are physically fit, able to work, and employable shall as a condition to receiving general assistance, register for work on public work projects and accept an assignment to work under section 346-31 or accept such employment as may be offered to them by the department under section 346-102 or by an employer. The term “public work

projects” includes any kind of labor under the department of accounting and general services of the State or the department of public works of any county, or under any other department, board, commission, or agency of the State or any county. All such agencies may employ persons registering under this section. Payment for the work shall not be made from the funds of the agency employing such persons but shall be made from the funds of the department. The department shall promulgate such rules and regulations as it deems necessary to enforce and carry out this section.

[(f)] (e) Applicants and recipients shall be required to satisfy all applicable provisions of this section. Recipients disqualified for failure to comply with any of the requirements under the provisions of this section shall be excluded from general assistance for a period not to exceed twelve months.

[(g)] (f) Within the limitations of this section, the department shall by rules adopted pursuant to chapter 91, determine:

- (1) The allowance for general assistance based upon the total amount appropriated for general assistance;
- (2) A method for determining assistance amounts; and
- (3) Other necessary provisions to implement general assistance.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act, upon its approval, shall take effect retroactive to July 1, 1995.

(Approved June 19, 1996.)

## ACT 290

S.B. NO. 2998

A Bill for an Act Relating to Environmental Protection.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that there is an immediate need to ensure the protection of Hawaii’s environment and natural resources for state residents as well as for future generations, as mandated by state and federal law. Under article XI, section 9, of the State Constitution, each person is guaranteed the right to a clean and healthful environment, as defined by laws regarding environmental quality, including pollution control, conservation, and protection and enhancement of natural resources. Article IX, section 8, of the State Constitution further gives the State the power to promote and maintain a healthful environment, including the prevention of any excessive demands on the environment and Hawaii’s resources. State environmental policy, as outlined in chapter 344, Hawaii Revised Statutes, also seeks to encourage the conservation of natural resources and promote efforts to eliminate damage to the environment.

SECTION 2. The department of health, using existing resources, shall conduct a study to review state and federal environmental laws to ensure their continued force, effectiveness, and consistency. The department of health shall submit its findings and conclusions from the study, to the legislature no later than twenty days prior to the convening of the 1997 legislative session.

SECTION 3. The legislature also finds and determines that Hawaii’s natural resources and physical environment must be managed and protected in a manner that

ensures the health, safety, and welfare of the citizens of the State, and preserves our limited natural resources for future generations. The legislature further finds and determines that efforts to undertake comprehensive strategic planning to identify overall goals and objectives of environmental management have been initiated by the department of health for its programs.

The legislature further finds that focusing the department of health's environmental goals and objectives will enable the department to utilize its resources in the most effective manner to address the environmental issues of this State.

The additional purpose of this Act is to direct the department of health to develop and revisit environmental goals utilizing input from the regulated community and the general public. It is the intent of the legislature to promote a continuing dialogue between the department of health, the regulated community, and the general public, regarding any proposed matters which are affected by the State's environmental goals. The legislature believes such discourse is necessary for the proper formulation of the department's objectives.

The legislature further finds that the obligations imposed on the department by this Act do not increase the department's existing duties and responsibilities and do not require the provision of additional resources for implementation. The changes require the department of health to focus its existing resources to facilitate and enhance the public's participation in environmental matters.

**SECTION 4.** The department of health, with input from the regulated community and general public, shall develop environmental goals and objectives, to be used in the implementation of its programs which shall ensure that the following natural resources are protected: air quality; land; coastal waters; inland waters; and groundwater. It shall also be the goal of the department to organize its environmental protection programs to improve the coordination of environmental planning and oversight; improve the enforcement of environmental laws, rules, and policies; and improve the ability to identify, prevent, and respond to significant releases of pollutants into the environment. The department of health shall ensure that the environmental goals and objectives will remain current by reviewing them every two years, with input from the regulated community and the general public. The department shall report its findings and conclusions following each such review, to the legislature no later than twenty days prior to the convening of the legislative session immediately following the completion of the review.

**SECTION 5.** This Act shall take effect upon its approval.

(Approved June 20, 1996.)

## **ACT 291**

**H.B. NO. 1257**

**A Bill for an Act Relating to the University of Hawaii.**

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature finds that there is a compelling state interest to support a strong and viable national guard. The national guard is the State's militia and has a mission that no other reserve or active military force has—to protect the lives and property of Hawaii's citizens. The guard assists not only in relief efforts following major natural disasters like Hurricane Iniki, but also during storms, fires, floods, and other destructive natural events. The guard also serves as back-up to law enforcement organizations during civil disturbances.



Besides its state mission, the national guard has a federal mission. The federal government provides \$141,300,000 to the Hawaii national guard for its federal mission, particularly the staffing of the 29th infantry brigade. In 1995, state general funding for the Hawaii army and air national guard amounted to \$5,100,000.

The purpose of this Act is to enable the national guard to recruit and retain guard members, improve the educational level of guard members, and thus meet its federal mission in staffing the 29th infantry brigade.

SECTION 2. Chapter 121, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§121- Tuition assistance for Hawaii national guard personnel to attend the University of Hawaii.** (a) The adjutant general, subject to the availability of funds, may award tuition assistance to qualified enlisted persons, warrant officers, and company grade officers (0-1 through 0-3) in the Hawaii national guard who are:

- (1) Residents of the State, as defined by the board of regents pursuant to section 304-4; and
- (2) Undergraduate students working toward a degree on any campus of the University of Hawaii; provided that any Hawaii national guard member who has been continuously receiving tuition assistance from the University of Hawaii since July 1, 1995, under the administrative continuation of tuition waivers previously authorized under section 304-14.6, and who has been enrolled in a graduate or professional degree program up to and including January 1, 1996, may continue to receive tuition assistance under this section until the member no longer meets the requirements of this section or obtains the degree the member is presently seeking, whichever occurs first.

(b) The adjutant general shall adopt rules in accordance with this chapter to carry out the purposes of this section. The rules shall include:

- (1) Descriptions of the minimum military and academic qualification of personnel who may be awarded full or partial tuition assistance under this section;
- (2) Listings of acceptable fields of study, degrees, and periods of eligibility for personnel who may be awarded tuition assistance under this section;
- (3) Procedures for demonstrating the ongoing, satisfactory military and academic performance of personnel who have accepted tuition assistance under this section;
- (4) Explanations of any reenlistment obligations for personnel who have accepted tuition assistance under this section;
- (5) Procedures for administratively transferring moneys for tuition assistance awarded under this section from the department of defense to the University of Hawaii; and
- (6) Procedures for enforcing this subsection.

(c) Chapters 42D and 103D shall not apply to this section.”

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$400,000 or so much thereof as may be necessary for fiscal year 1996-1997 to provide tuition assistance for Hawaii national guard personnel to attend the University of Hawaii.

The sum appropriated shall be expended by the department of defense for the purposes of this Act.

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on July 1, 1996.

(Approved June 24, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 292**

H.B. NO. 2647

A Bill for an Act Relating to Optometry.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 459, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§459- Therapeutically certified optometrists; scope; qualifications; advisory committee.** (a) The use and prescription of topical therapeutic pharmaceutical agents as established by the joint formulary advisory committee and adopted by the board for the treatment and management of conditions of the anterior segment of the human eye, eyelids, and lacrimal system and the non-invasive surface removal of superficial foreign bodies from the anterior segment of the human eye and eyelids is authorized only for an optometrist licensed under this chapter who meets the requirements of a therapeutically certified optometrist as authorized in this section. The therapeutically certified optometrist shall not prescribe, dispense, or administer oral pharmaceutical agents except those available without prescription. Treatment of glaucoma and performing any invasive surgery shall not be allowed. Therapeutic pharmaceutical agents shall not include any of the controlled substances enumerated in sections 329-14, 329-16, 329-18, 329-20, and 329-22.

(b) The board shall grant recognition as a therapeutically certified optometrist; provided the optometrist has:

- (1) A current, unencumbered license as an optometrist in this State;
- (2) Completed a one-hundred hour board-approved course in the treatment and management of ocular diseases;
- (3) Passed the National Board of Examiners in Optometry Treatment and Management of Ocular Disease examination;
- (4) Completed one-hundred hours of practical therapeutic pharmaceutical agents use under the supervision of an ophthalmologist licensed under chapter 453. The ophthalmologist shall certify completion of the one-hundred hours of hands-on experience and the competency of the optometrist to prescribe, dispense, and administer therapeutic pharmaceutical agents on a form and format prescribed by the board; and
- (5) The therapeutically certified optometrist shall renew the certification with the biennial renewal of license and submit proof of satisfying eight hours of continuing education in the treatment and management of ocular diseases.

(c) The department of commerce and consumer affairs shall establish a joint formulary advisory committee composed of two persons licensed as optometrists, two persons licensed as pharmacists, and two persons licensed in ophthalmology by the board of medical examiners. The joint formulary advisory committee shall recommend the applicable formulary for persons certified under this section. The board of optometry shall adopt the formulary as established by the joint formulary advisory committee in its rules.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect on July 1, 1999.

(Approved June 24, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 293**

H.B. NO. 3332

A Bill for an Act Relating to Agriculture.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature recognizes the importance of Hawaii's stringent animal quarantine law to safeguard and maintain the public's health, safety, and well-being. However, the legislature finds that individuals with physical handicaps who rely on utility dogs to assist them in their daily lives are discouraged and impeded from travelling out of the State as their dogs are subject to quarantine upon returning to the State. The legislature further finds that the department of agriculture is in the process of re-evaluating its present quarantine protocol requirements in light of a new serological test that is currently being evaluated. While the department of agriculture is doing so, the legislature believes that the governor should be granted the flexibility to make exceptions to the quarantine requirements for people with special needs so that travel to and from the State will not be unduly burdensome.

The purpose of this Act is to enable:

- (1) Guide dogs, service dogs, and signal dogs (collectively referred to as "utility dogs") to enter the State, subject to a thirty-day quarantine and other requirements as described in this Act, by executive order of the governor; and
- (2) Qualified utility dogs and their handicapped handlers to depart from and return to the State for travel to and from the continental United States or Alaska to obtain necessary medical treatment that is unavailable in the State for the handicapped handler.

This exemption from the existing quarantine requirements is intended as a temporary, one-year exemption until the department of agriculture concludes its evaluation of the State's quarantine requirements.

SECTION 2. The governor, by executive order, may instruct the department of agriculture to allow a utility dog to enter the State, subject to a thirty-day quarantine and the following requirements:

- (1) Two vaccinations with a monovalent inactivated rabies vaccine shall be administered to the utility dog by a veterinarian prior to entry into the State in the following manner:
  - (A) The first vaccination shall not be administered before the dog is three months of age; and
  - (B) The second or subsequent vaccinations shall not be administered less than six months following the first vaccination and not less than three months nor more than twelve months prior to the dog's entry into the State;
- (2) The owner of the utility dog shall obtain a health certificate endorsed by an accredited veterinarian. The name, lot number, and expiration date of the vaccine administered and the route of administration shall

appear on the health certificate. The health certificate shall be written in English;

- (3) Upon the request of the owner of the utility dog for an import permit number, the department of agriculture shall issue an official microchip to be implanted in the dog prior to its entry into the State. Prepayment of the cost of the microchip, including shipping and handling charges, shall be made by credit card or money order. It shall be the responsibility of the owner of the utility dog to have the microchip implanted by the veterinarian endorsing the health certificate and administering the rabies vaccinations. Only official microchips issued by the department of agriculture shall be recognized for the purposes of this section;
- (4) A pre-entry antibody test shall be conducted not less than three months nor more than twelve months prior to the utility dog's entry into the State using the Office of International Epizootics' fluorescent antibody virus neutralization test method. The serum shall contain at least 0.5 I.U./ml. rabies antibodies. Blood and serum samples shall be submitted to a laboratory approved by the department of agriculture for serological testing and retained for genetic testing for not less than four months after the entry of the dog into the State;
- (5) Upon entry into the State, the utility dog shall be detained by the department of agriculture and immediately tested for rabies antibodies using the Office of International Epizootics' fluorescent antibody virus neutralization test method. A utility dog with an antibody titer equal to or greater than 0.5 I.U./ml. shall be released from quarantine after thirty days. The owner of the utility dog shall be required to sign a release form allowing the department of agriculture to draw blood samples to conduct the antibody test and to use sedatives or anesthetics as required. Only one antibody test shall be conducted upon entry of the utility dog into the State and the results of the test shall be final and conclusive. Any utility dog not showing an adequate titer shall be quarantined for one hundred twenty days;
- (6) A utility dog released from quarantine after thirty days shall remain under provisional quarantine in its owner's custody and shall be presented for inspection to quarantine officials or a veterinarian approved by the department of agriculture not less than once every thirty days for the ninety-day time period following its release from quarantine facilities. The department of agriculture shall have the authority to quarantine any utility dog that upon inspection, displays signs and symptoms suggestive of rabies;
- (7) Inspections shall be on dates mutually agreed upon by the department of agriculture and the owner of the utility dog. Failure to present the utility dog within seven days of the agreed upon inspection date or the failure to notify the department of agriculture of the failure to present the utility dog for inspection may result in the quarantine of the utility dog for the remainder of the ninety-day time period;
- (8) The owner of a utility dog shall immediately notify the department of agriculture of any of the following that occurs within the ninety-day time period following the dog's release from quarantine facilities:
  - (A) The death of the utility dog and the cause of death;
  - (B) The change of residence address;
  - (C) The change of ownership of the utility dog;
  - (D) The escape of the utility dog; or
  - (E) The transport of the utility dog inter-island or out of State;
 and

- (9) The utility dog shall be immediately submitted to the department of agriculture for rabies testing upon the death of the dog during the ninety-day time period;

provided that a qualified utility dog and its handicapped handler may depart from and return to the State for travel to and from the continental United States or Alaska to obtain necessary medical treatment that is unavailable in the State for the handicapped handler, and subject to the following requirements:

- (1) Two vaccinations with a monovalent inactivated rabies vaccine shall be administered to the qualified utility dog by a veterinarian prior to entry into the State in the following manner:
  - (A) The first vaccination shall not be administered before the dog is three months of age; and
  - (B) The second or subsequent vaccinations shall not be administered less than six months following the first vaccination and not less than three months nor more than twelve months prior to the dog's entry into the State;
- (2) The owner of the qualified utility dog shall obtain the following documents prior to the dog's entry into the State:
  - (A) Health certificate endorsed by an accredited veterinarian. The name, lot number, and expiration date of the vaccine administered and the route of administration shall appear on the health certificate. The health certificate shall be written in English; and
  - (B) Notarized statement from the handler's physician describing the nature of the handler's illness or injury and the necessary medical treatment that is being sought in the continental United States or Alaska. The statement shall include the name and address of the physician, and the name and address of the medical facility where the handicapped handler will be treated.
- (3) Upon the request of the owner of the qualified utility dog for an import permit number, the department of agriculture shall issue an official microchip to be implanted in the dog prior to its entry into the State. Prepayment of the cost of the microchip, including shipping and handling charges, shall be made by credit card or money order. It shall be the responsibility of the owner of the qualified utility dog to have the microchip implanted by the veterinarian endorsing the health certificate and administering the rabies vaccinations. Only official microchips issued by the department of agriculture shall be recognized for the purposes of this section;
- (4) A pre-entry antibody test shall be conducted not less than three months nor more than twelve months prior to the qualified utility dog's entry into the State using the Office of International Epizootics' fluorescent antibody virus neutralization test method. The serum shall contain at least 0.5 I.U./ml. rabies antibodies. Blood and serum samples shall be submitted to a laboratory approved by the department of agriculture for serological testing and retained for genetic testing for not less than four months after the entry of the dog into the State;
- (5) Upon entry into the State, the qualified utility dog shall be detained by the department of agriculture and immediately tested for rabies antibodies using the Office of International Epizootics' fluorescent antibody virus neutralization test method. A qualified utility dog with an antibody titer equal to or greater than 0.5 I.U./ml. shall be released from quarantine when the antibody test is adequately confirmed and the department of agriculture has determined that the dog is safe to be released into the community; provided that in no case shall a qualified

utility dog be subject to any length of stay beyond what is considered to be necessary in determining the validity of the test results. The owner of the qualified utility dog shall be required to sign a release form allowing the department of agriculture to draw blood samples to conduct the antibody test and to use sedatives or anesthetics as required. Only one antibody test shall be conducted upon entry of the qualified utility dog into the State and the results of the test shall be final and conclusive. Any qualified utility dog not showing an adequate titer shall be quarantined for one hundred twenty days.

- (6) Any qualified utility dog that is absent from the State for longer than six months, as measured from the day the dog departs from the State, or does not possess a protective, rabies virus, antibody titer, shall be subject to the quarantine requirements established by the department of agriculture pursuant to chapter 141, Hawaii Revised Statutes, and this Act, upon the dog's return to the State; and
- (7) A qualified utility dog released from quarantine shall remain under provisional quarantine in its owner's custody and shall be presented for inspection to quarantine officials or a veterinarian approved by the department of agriculture not less than once every thirty days for the ninety-day time period following its release from quarantine facilities. The department of agriculture shall have the authority to quarantine any qualified utility dog that upon inspection, displays signs and symptoms suggestive of rabies.

The cost of implementing the procedures established under this section, and all personal expenses incurred by the owner of the utility dog or the owner of the qualified utility dog in complying with the procedures established under this section, shall be borne by the owner.

As used in this section:

"Physician" has the same meaning as defined in section 327D-4, Hawaii Revised Statutes.

"Qualified utility dog" means any utility dog belonging to a handicapped handler, who must depart from and return to the State for travel to and from the continental United States or Alaska to obtain necessary medical treatment that is unavailable in the State for the handicapped handler.

"Utility dog" means a guide dog, service dog, or signal dog as defined in section 515-3(8), Hawaii Revised Statutes.

"Veterinarian" has the same meaning as defined in section 471-1, Hawaii Revised Statutes.

**SECTION 3.** In the event of a conflict between this Act and any other law or rule, this Act shall control.

**SECTION 4.** This Act shall take effect upon its approval and shall be repealed:

- (1) One year from its effective date; or
- (2) Upon adoption of the department of agriculture's new quarantine rules; whichever is sooner.

(Approved June 24, 1996.)

## ACT 294

H.B. NO. 1716

A Bill for an Act Relating to the University of Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§304- University of Hawaii - West Oahu special fund.** (a) There is established within the treasury of the State a special fund to be known as the University of Hawaii - West Oahu special fund. The proceeds of the special fund shall be used for the following purposes:

- (1) Planning, land acquisition, design, construction, and equipment necessary for the development of the permanent campus of the University of Hawaii - West Oahu in Kapolei; and
- (2) Planning, land acquisition, design, improvement, and construction of infrastructure and other public or common facilities necessary for the development of the permanent campus of the University of Hawaii - West Oahu in Kapolei.

(b) The following shall be deposited into the special fund:

- (1) Appropriations by the legislature to the special fund;
- (2) All net proceeds from the sale of public lands, all net rents from leases, licenses, and permits, or all net proceeds derived from development rights for public lands:
  - (A) Proposed for large lot subdivision as a five hundred acre parcel and designated as Lot 10077 in Land Court Application 1069; and
  - (B) Obtained from Campbell Estate in the land exchange described in section 10<sup>1</sup> of this Act located mauka of the H-1 Freeway and consisting of nine hundred forty-one acres, more or less; and
- (3) Interest earned or accrued on moneys in the special fund.

(c) The fund shall be managed by the University of Hawaii, which shall also make expenditures from the fund.

(d) Notwithstanding any other law to the contrary, no moneys from the special fund may be expended for any purposes other than the purposes set forth herein unless otherwise approved by the legislature.”

SECTION 2. The legislature finds that it is in the public interest to enter into a land exchange with Campbell Estate involving private lands in Kapolei, Oahu, for public lands also in Kapolei, Oahu.

Lands were acquired by the State from Campbell Estate for a proposed University of Hawaii West Oahu campus in Kapolei. The Hawaii Raceway Park in Kapolei was also acquired by the State from Campbell Estate by final order of condemnation. It is now proposed to construct the West Oahu campus on a much larger area of land presently owned by Campbell Estate above the H-1 freeway, but still in the Kapolei area.

Campbell Estate has proposed to exchange this much larger area of land above the H-1 freeway for the Hawaii Raceway Park.

This land exchange is consistent with the State's commitment to construct a West Oahu campus in Kapolei, which has been long recognized as the secondary urban center for the island of Oahu. This land exchange would also provide the State with additional land in Kapolei that will afford the State greater flexibility in the sequencing and rate of development in Kapolei.

SECTION 3. Notwithstanding section 171-50(b), Hawaii Revised Statutes, the eighteenth legislature approves the land exchange involving private lands in Kapolei, Oahu, for public lands also located in Kapolei, Oahu; provided that:

- (1) The public lands shall be less than or of substantially equal "fair market" value to that of the private land;
- (2) The "fair market" value of the private land and the public land shall be separately determined by a disinterested qualified appraiser or appraisers, and the cost shall be borne equally between the owner and the board of land and natural resources; and
- (3) No payment by the State shall be required should the private land exceed the value of the public land, but any difference in the value of the public land over the private land shall be paid to the State at the time of the exchange; provided that no exchange shall be made should the value of the public land exceed one hundred twenty per cent of the value of the private land.

SECTION 4. Notwithstanding section 171-50(c), Hawaii Revised Statutes, the eighteenth legislature approves the land exchange involving private lands in Kapolei, Oahu, owned by Campbell Estate (more specifically identified as portions of TMK Nos. (1)9-2-01:1, (1)9-2-02:1, and (1)9-2-04:5), and public lands also located at Kapolei, Oahu (more specifically identified as a portion of TMK No. (1)9-1-75:44); provided that the following conditions are met:

- (1) An exchange deed is executed between the parties which contains the following:
  - (A) The location and area of the parcels of land to be exchanged;
  - (B) The value of the lands to be conveyed by the State and Campbell Estate;
  - (C) The name or names of the appraisers involved;
  - (D) The date of the appraisal or appraisals which shall not be more than six months prior to the date of the final approval of the land exchange by the board of land and natural resources; and
  - (E) Construction of the University of Hawaii West Oahu campus at Kapolei shall commence by December 31, 2006; provided that such commencement date shall be extended to December 31, 2011, if the legislature appropriates funds for the planning and design of the University of Hawaii West Oahu campus at Kapolei by December 31, 2006; and
- (2) All of the right, title and interest in the approximately nine hundred forty-one acre area located mauka of the H-1 freeway obtained from Campbell Estate in this land exchange, more specifically identified as portions of TMK Nos. (1)9-2-01:1, (1)9-2-02:1, and (1)9-2-04:5, shall be conveyed in fee simple by deed to the University of Hawaii.

SECTION 5.<sup>2</sup> This Act shall take effect upon its approval; provided that sections 2, 3, and 4 shall be repealed on June 30, 1997.

(Approved June 25, 1996.)

#### Notes

1. Should probably be "section 2".
2. No Ramseyer clause.



## ACT 295

S.B. NO. 608

A Bill for an Act Relating to Public Lands.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that it is in the public interest to enter into a land exchange with Campbell Estate involving lands in Kapolei, Oahu.

Certain land in Kapolei was deeded by Campbell Estate to the State in 1994. However, since that land exchange, the site of the proposed University of Hawaii West Oahu campus has been located to a much larger area of land presently owned by Campbell Estate above the H-1 freeway.

The land deeded to the State in 1994 is approximately 183 acres in size and is identified as portions of Tax Map Key (TMK) Nos. (1)9-1-17:71 and (1)9-1-17:72. It is in the public interest for the State to exchange this parcel for other land of equal or greater area and equivalent value in Kapolei now owned by Campbell Estate, which is closer to the H-1 freeway and the proposed University of Hawaii West Oahu campus.

This exchange would be consistent with the concept of a secondary urban center at Kapolei, because the State would acquire lands with better access to the H-1 freeway, Farrington Highway, and proposed major road improvements in the Kapolei area.

SECTION 2. Notwithstanding the provisions of section 171-50(b), Hawaii Revised Statutes, the legislature approves the land exchange involving public lands in Kapolei, more particularly identified as portions of TMK Nos. (1)9-1-17:71 and (1)9-1-17:72, for private lands also located in Kapolei, Oahu, including, but not limited to, portions of TMK Nos. (1)9-1-17:04, (1)9-1-16:08, and (1)9-1-18:01, provided that:

- (1) The public land shall be of substantially equal fair market value to that of the private land;
- (2) The fair market value of the private land and the public land shall be separately determined by a disinterested qualified appraiser or appraisers, and the cost for this determination shall be borne equally between the owner of the private land and the board of land and natural resources;
- (3) The private land shall consist of, at a minimum, those parcels of land more particularly identified as portions of TMK Nos. (1)9-1-17:04, (1)9-1-16:08, and (1)9-1-18:01; provided that should the results of the appraisal of these parcels show that these parcels are of lesser fair market value than the public land, the private land shall include such other parcels of land as necessary to increase the valuation of the private land to that of the public land; and
- (4) No payment by the State shall be required should the value of the private land exceed the value of the public land, but any difference in value of the public land over the private land shall be paid to the State at the time of the exchange; provided that no exchange shall be made should the value of the public land exceed one hundred twenty per cent of the value of the private land.

SECTION 3. Notwithstanding the provisions of section 171-50(c), Hawaii Revised Statutes, the legislature approves the land exchange involving private lands at Kapolei, Oahu, owned by Campbell Estate, and public lands also located at

Kapolei, Oahu; provided that an exchange deed is executed between the parties which contains the following:

- (1) The location and area of the parcels of land to be exchanged;
- (2) The value of the lands to be conveyed by the State and Campbell Estate;
- (3) The name or names of the appraisers involved; and
- (4) The date of the appraisal or appraisals which shall not be more than six months prior to the date of final approval of the exchange by the board of land and natural resources.

SECTION 4. This Act shall take effect upon its approval, and shall be repealed on June 30, 1997.

(Approved June 25, 1996.)

**ACT 296****S.B. NO. 2458**

A Bill for an Act Relating to Marine Patrol.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the increased use of the State's shores and ocean waters for commercial and recreational activity has resulted in a need for expanded and more effective enforcement programs to preserve and protect Hawaii's natural resources. While the legislature has authorized additional positions for the State's marine patrol program to mitigate the enforcement staffing shortage problem, the legislature finds that inadequacies still exist as the responsibilities for the enforcement of the shorelines and ocean waters are split between the department of land and natural resources and the department of public safety. The Auditor's report of December, 1992, which examined this issue revealed that the marine patrol unit belongs more properly in the department of land and natural resources rather than the department of public safety. The purpose of this Act is to provide for a better coordinated shoreline and ocean waters enforcement program by transferring the functions of the marine patrol program from the department of public safety to the department of land and natural resources.

SECTION 2. Section 199-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The conservation and resources enforcement officers, with respect to all state lands, including public lands, state parks, forest reserves, forests, aquatic life and wildlife areas, and any other lands and waters subject to the jurisdiction of the department of land and natural resources, shall:

- (1) Enforce title 12, and chapter 6E, and rules adopted thereunder;
- (2) Investigate complaints, gather evidence, conduct investigations, and conduct field observations and inspections as required or assigned;
- (3) Cooperate with enforcement authorities of the State, counties, and federal government in development of programs and mutual agreements for conservation and resources enforcement activities within the State;
- (4) Cooperate with established search and rescue agencies of the counties and the federal government in developing plans and programs, and mutual aid agreements for search and rescue activities within the State;

- (5) Check and verify all leases, permits, and licenses issued by the department of land and natural resources;
- (6) Enforce the laws relating to firearms, ammunition, and dangerous weapons contained in chapter 134;
- (7) [Enforce] Whether through a specifically designated marine patrol or otherwise, enforce the rules in the areas of boating safety, conservation, and search and rescue relative to the control and management of boating facilities owned or controlled by the State, ocean waters, and navigable streams and any activities thereon or therein, and beaches encumbered with easements in favor of the public, and the rules regulating vessels and their use in the waters of the State; and
- (8) Carry out such other duties and responsibilities as the board of land and natural resources from time to time may direct.”

SECTION 3. Section 200-2, Hawaii Revised Statutes, is amended to read as follows:

**“[[§200-2]] Board of land and natural resources, powers and duties.** The board shall [establish within the department a separate administrative unit which shall] have the primary responsibility for administering the ocean recreation and coastal areas programs and performing the functions heretofore performed by the department of transportation[.] and the department of public safety in the areas of boating safety, conservation, search and rescue, and security of small boat harbor environs.”

SECTION 4. Section 266-24, Hawaii Revised Statutes, is amended to read as follows:

**“§266-24 Enforcement.** The director of transportation shall enforce this chapter and all rules thereunder, except for the rules relative to the control and management of the beaches encumbered with easements in favor of the public and ocean waters which shall be enforced by the department of land and natural resources. For the purpose of the enforcement of this chapter and of all rules adopted pursuant to this chapter the powers of police officers are conferred upon the director of transportation and any officer, employee, or representative of the department of transportation. Without limiting the generality of the foregoing, the director and any person appointed by the director hereunder may serve and execute warrants, arrest offenders, and serve notices and orders. Every state and county officer charged with the enforcement of laws and ordinances shall enforce and assist in the enforcement of this chapter and of all rules adopted pursuant to this chapter.”

SECTION 5. Act 272, Session Laws of Hawaii 1991, is amended by repealing section 31.

[“SECTION 31. **Enforcement by the marine patrol.** Pursuant to section 1 of Act 211, Session Laws of Hawaii 1989, the law enforcement and security functions and employees of the department of transportation shall be transferred to the department of public safety effective July 1, 1991. It is the intent of the legislature that the marine patrol, which is currently under the department of transportation and will be transferred to the department of public safety on July 1, 1991, shall be primarily responsible for the enforcement of boating, ocean, recreational, and coastal area programs pursuant to chapter . The department of land and natural resources shall cooperate with the department of public safety to ensure the effective coordination of resource management, conservation, education, enforcement, and control with regard to the enforcement of chapter .”]

SECTION 6. All rights, powers, functions, and duties of the department of public safety, maritime law enforcement division, marine patrol branch, are transferred to the department of land and natural resources, conservation and resources enforcement program under chapter 199, Hawaii Revised Statutes.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act; provided, however, nothing in this Act shall be construed to exempt any officer or employee of the State involved in this transfer from any type of employment action, including, without limitation, any reduction in force.

SECTION 7. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other property heretofore made, used, acquired, or held by the department of public safety, maritime law enforcement division, marine patrol branch, shall be transferred to the department of land and natural resources, conservation and resources enforcement program under chapter 199, Hawaii Revised Statutes.

SECTION 8. The chairperson of the board of land and natural resources shall submit a report to the legislature on the need for any additional enforcement duties under chapter 199, Hawaii Revised Statutes, that may be necessary for enforcement of the department of land and natural resources's boating, ocean recreation, and coastal area programs under chapter 200, Hawaii Revised Statutes. The report shall specify:

- (1) How enforcement duties under chapter 199, Hawaii Revised Statutes, have been integrated and exercised within the department's boating, ocean recreation, and coastal area programs under chapter 200, Hawaii Revised Statutes;
- (2) The specific training, qualifications, job descriptions, and duties of conservation and resources enforcement officers under chapter 199, Hawaii Revised Statutes, necessary for the enforcement of boating, ocean recreation, and coastal area programs under chapter 200, Hawaii Revised Statutes; and
- (3) Recommended legislation necessary for any additional enforcement duties necessary for boating, ocean recreation, and coastal area programs under chapter 200, Hawaii Revised Statutes.

The chairperson of the board of land and natural resources shall submit the report to the legislature no later than twenty days prior to the convening of the regular session of 1997.

SECTION 9. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefore to the legislature at its next session thereafter for review by the legislature.

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved July 1, 1996.)

**ACT 297**

S.B. NO. 2552

A Bill for an Act Relating to State Departments.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the State is faced with continuing fiscal constraints that must be approached with the realization that state government needs to be restructured to promote more efficient and cost-effective delivery of public services. The 1993 interim commission on government redesign issued a report to the legislature supporting the need to redesign the delivery of state government services. While the legislature acknowledges that the current state administration has taken certain actions to respond to the State's current fiscal crisis and to restructure state government agencies for more efficient and effective delivery of government services, the task of reorganizing state government falls jointly on the legislature and the governor: the legislature to set policies and the governor to develop an action plan to implement the policies.

Due to the current fiscal crisis and the need for government agencies to adapt to the ever-changing needs and demands of the public they serve, state agencies must revise and retool their concepts of public service. The legislature also believes that many departmental missions and programs have expanded to the point where they have strayed from what has been perceived as services provided by state government, but instead have resulted in the duplication of effort among state agencies, as well as encroachment into the functions of the private sector. Many state government services, even though well-meaning, may have placed increased strain on a weak state fiscal situation.

The purpose of this Act is to effectuate the reorganization of state government by:

- (1) Establishing legislative policies for reorganization; and
- (2) Mandating the governor to develop implementation strategies that focus on the feasibility of:
  - (a) Consolidating specified administrative and business departments; and
  - (b) Reorganizing the remaining departments and offices of state government listed under section 26-4, Hawaii Revised Statutes, for future implementation.

SECTION 2. The legislature declares that the reorganization of state government shall commence upon the effective date of this Act under the following guiding principles and goals:

- (1) The creation of a clear sense of mission for reorganizing state government;
- (2) The avoidance of making changes to reorganize state government for the sake of change only;
- (3) The development of government which provides "user-friendly" services in and out of state government;
- (4) The adoption of "best practices" of management and operations;
- (5) The search for economies of scale;
- (6) The elimination of duplicative or outmoded functions and activities;

- (7) The enhancement of productivity by consolidating functions;
- (8) The elimination of unnecessary regulation;
- (9) The redesigning of processes to increase efficiency, cut costs, and reduce public inconvenience;
- (10) The exposure of government operations to competition;
- (11) The guarantee of effective, efficient government operations; and
- (12) The realization of significant long-term savings.

SECTION 3. During fiscal year 1996-1997, the governor shall formulate a strategy to consolidate administrative departments. The focus of the consolidation shall include but not be limited to:

- (1) The department of human resources development; and
- (2) The department of accounting and general services.

SECTION 4. During fiscal year 1996-1997, the governor shall formulate a strategy to consolidate the business departments. The focus of the consolidation shall include but not be limited to:

- (1) The department of business, economic development, and tourism;
- (2) The department of commerce and consumer affairs; and
- (3) The department of agriculture.

SECTION 5. During fiscal year 1996-1997, the governor shall further facilitate the reorganization of state government by examining the possible reorganization of the following departments and offices of state government listed under section 26-4, Hawaii Revised Statutes, for future implementation:

- (1) The department of the attorney general;
- (2) The department of budget and finance;
- (3) The department of taxation;
- (4) The University of Hawaii;
- (5) The department of education;
- (6) The department of health;
- (7) The department of human services;
- (8) The department of land and natural resources;
- (9) The department of Hawaiian home lands;
- (10) The department of transportation;
- (11) The department of labor and industrial relations;
- (12) The department of defense; and
- (13) The department of public safety.

SECTION 6. The governor shall submit a report on the following to the legislature no later than twenty days before the convening of the regular session of 1997:

- (1) A detailed plan, which includes redefining department roles, their proposed budgets, and projected savings expected from the reorganization of the specified administrative and business departments of the executive branch listed under sections 3 and 4 of this Act;
- (2) Findings and recommendations for the possible reorganization of the remaining departments and offices of state government listed under section 5 of this Act; and
- (3) The effect of reorganization on state government services.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 1, 1996.)

## ACT 298

S.B. NO. 2856

A Bill for an Act Relating to the Office of Children and Youth.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to recognize the need to reorganize the office of the governor for greater efficiency and to create a better focus on important policies by repealing the statute that created the office of children and youth; transferring direct service programs and personnel to other government agencies; and transferring policy, planning, and evaluation activities and personnel directly to the governor's office.

In a time of fiscal constraint throughout state government, the office of the governor must take the lead in operating with the greatest effectiveness possible, given the resources available. Further, Attorney General Opinion 96-1 indicates that offices attached to the office of the governor, unless clearly temporary or special in nature, do not meet constitutional requirements.

SECTION 2. Section 296-83, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The department of education shall work cooperatively with the department of human services, the department of health, college level education programs, [the office of children and youth,] early education organizations, parents of young children, and other appropriate organizations in developing a quality early education plan. The plan shall include but not be limited to the following:

- (1) Standards for curriculum, activities, facilities, and teacher training for early childhood education;
- (2) Methods and materials designed to involve and educate parents and guardians in the education and development of their young children;
- (3) A timetable and implementation schedule, approved by the board of education, to be submitted to the governor and the legislature;
- (4) Costs for delivery of early childhood services, including how costs can be shared between the public and private sectors; and
- (5) Assessment of training and certification capacity of teachers including assurances by teacher training institutions to recruit and graduate qualified staff for early childhood education.”

SECTION 3. Section 321-353, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established within the department for administrative purposes the Hawaii early intervention coordinating council. Members shall be appointed for three-year terms by the governor without the necessity of the advice and consent of the senate. The membership of the council shall consist of fifteen members selected from the following:

- (1) At least three parents of infants, toddlers, or children under the age of seven with special needs;
- (2) At least three public or private providers of early intervention services;
- (3) At least one representative from the legislature;
- (4) At least one person involved in personnel preparation;
- (5) At least one member representing the department of education;
- (6) At least one member representing the department of human services;

- (7) At least one member representing the [office of children and youth;] office of the governor; and
- (8) Other members representing private or public agencies involved in or interested in the payment for or provision of services to infants and toddlers with special needs and their families.

Any vacancy on the council shall be filled in the same manner in which the original position was filled.”

SECTION 4. Section 321D-1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established a statewide interdepartmental cluster for services to children within the department of health which shall be comprised of representatives of major child-serving agencies with statewide authority and responsibility. The cluster shall include the department of education, the department of health, the department of human services, the judiciary, the [office of children and youth,] office of the governor, and the office of youth services as regular members. The department of health shall staff the cluster and provide an identified place where development and coordination of service plans and programs for the multisystem children having severe emotional and developmental problems may be done on a systematic basis.”

SECTION 5. Section 350B-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The advisory committee shall include private and public members. Public sector representation shall include the department of health, department of human services, department of education, [office of children and youth,] office of youth services, and the judiciary. The coalition shall elect the private sector representatives, whose membership shall equal one more than the number of public sector representatives.”

SECTION 6. Section 367-4, Hawaii Revised Statutes, is amended to read as follows:

“**§367-4 County committees on status of women, membership, organization, etc.** The mayor of each county shall appoint a county committee on the status of women charged with the duty and responsibility of developing information as the state commission on the status of women requires or as the committee deems advisable concerning the status of women within the respective counties; and other appropriate duties and responsibilities as may be deemed necessary by each county. The committees shall submit to the state commission, plans and proposals affecting the status of women in the several counties. Each county committee shall endeavor to secure the widest possible citizen participation in its efforts and, for this purpose, may utilize existing public or private organizations. The membership of each county committee shall include, ex officio, the county attorney or corporation counsel[; the senior county representative of the office of children and youth;] and the county representative of the commission on the status of women. The other members shall be selected on the basis of their interest and knowledge in, and their ability to make contributions to, the solution of problems relating to the status of women within the county and their knowledge of local conditions. The chairperson shall be elected annually from the nongovernmental members of the committee. The terms of office of each member shall be four years. Each county committee shall meet at least four times a year. The members of the county committees shall receive no compensation



for their services. The respective county legislative bodies are authorized to make appropriations to meet the necessary expenses of the committees.”

SECTION 7. Chapter 581, Hawaii Revised Statutes, is repealed.

SECTION 8. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held relating to the functions transferred by this Act shall be transferred with the functions to which they relate.

SECTION 9. In order to effectuate this Act, three positions shall be transferred from the office of children and youth to programs funded by budget program identification number HMS 302 and four positions shall be transferred to programs funded by budget program identification number HMS 501. The remaining two positions shall remain in the office of the governor.

Tenured employees transferred to the department of human services and the office of youth services pursuant to this Act shall not suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit as a consequence of this Act; provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

If an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State and shall be transferred to some other office or position for which the officer or employee is qualified and eligible under the personnel laws of the State as determined by the director of the department of human resources development. Such individual shall not suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit as a consequence of this Act; provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

Employees who, prior to this Act were exempt from civil service, and who are transferred by this Act to the department of human services and the office of youth services, shall continue to retain their exempt status after the transfer and shall not suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit as a consequence of this Act; provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws. In order to facilitate a smooth transition of activities, temporary positions which are currently exempt from civil service may be temporarily continued as exempt from civil service. Any exemption under this provision shall cease at such time as the current employee terminates, or the position is converted to permanent status, or expires.

SECTION 10. A special assistant for children and youth shall be designated in the office of the governor.

SECTION 11. All funds appropriated for fiscal year 1996-1997 directly or indirectly relating to the activities transferred under this Act shall be appropriately transferred to the appropriate department with the activities to which they relate.

SECTION 12. It is the intent of this Act to neither jeopardize the receipt of any federal aid nor impair the obligation of the state or agency thereof to persons with which it has existing contracts or to the holders of any bond issued by the state or by any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but

shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 13. All acts passed during this regular session of 1996, whether enacted before or after the passage of this Act, shall be amended to conform to this Act, unless such acts specifically provide that this Act is being amended.

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 15. This Act shall take effect upon its approval.

(Approved July 1, 1996.)

## ACT 299

S.B. NO. 3232

A Bill for an Act Relating to State Government.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 225M, Hawaii Revised Statutes, is amended by amending sections 225M-1 to 225M-4 to read as follows:

“**[[§225M-1]] Purpose.** The purpose of this chapter is to establish an office of [state] planning to assist the governor and the director of business, economic development, and tourism in maintaining an overall framework to guide the development of the State through a continuous process of comprehensive, long-range, and strategic planning to meet the physical, economic, and social needs of Hawaii’s people, and provide for the wise use of Hawaii’s resources in a coordinated, efficient, and economical manner, including the conservation of those natural, environmental, recreational, scenic, historic, and other limited and irreplaceable resources which are required for future generations.

The establishment of an office of [state] planning in the [office of the governor] department of business, economic development, and tourism, for administrative purposes, is intended to:

- (1) Fix responsibility and accountability to successfully carry out statewide planning programs, policies, and priorities;
- (2) Improve the efficiency and effectiveness of the operations of the executive branch;
- (3) Ensure comprehensive planning and coordination to enhance the quality of life of the people of Hawaii.

**§225M-2 Office of [state] planning, establishment; responsibilities.** (a) There is established within the [office of the governor] the department of business, economic development, and tourism an office of [state] planning. The head of the office shall be known as the director of the office of [state] planning, hereinafter referred to as director. The director shall have: training in the field of urban or regional planning, public administration, or other related fields; experience in programs or services related to governmental planning; and experience in a supervisory, consultative, or administrative capacity. The director shall be appointed by the governor without regard to chapters 76 and 77, and shall be compensated at a salary level set by the governor. The director shall be included in any benefit program generally applicable to the officers and employees of the State. The director shall

retain such staff as may be necessary for the purposes of this chapter, in conformity with chapters 76 and 77.

(b) The office of [state] planning shall gather, analyze, and provide information to the governor to assist in the overall analysis and formulation of state policies and strategies to provide central direction and cohesion in the allocation of resources and effectuation of state activities and programs, and effectively address current or emerging issues and opportunities. More specifically, the office shall engage in the following activities:

- (1) [Comprehensive] State comprehensive planning and program coordination. Formulating and articulating comprehensive statewide goals, objectives, policies, and priorities, and coordinating their implementation through the statewide planning system established in part II of chapter 226;
- (2) Strategic planning. Identifying and analyzing significant issues, problems, and opportunities confronting the State, and formulating strategies and alternative courses of action in response to identified problems and opportunities by:
  - (A) Providing in-depth policy research, analysis, and recommendations on existing or potential areas of critical state concern;
  - (B) Examining and evaluating the effectiveness of state programs in implementing state policies and priorities;
  - (C) Monitoring through surveys, environmental scanning, and other techniques—current social, economic, and physical conditions and trends; and
  - (D) Developing, in collaboration with affected public or private agencies and organizations, implementation plans and schedules and, where appropriate, assisting in the mobilization of resources to meet identified needs;
- [(3)] Population planning. Planning for the management of the State's population size, rate of growth, and distribution through research, coordination, and technical assistance to state and county agencies;
- (4) Intergovernmental] (3) Planning coordination and cooperation. Facilitating coordinated and cooperative planning and policy development and implementation activities among state agencies, and between the state, county, and federal governments, by:
  - (A) Reviewing, assessing, and coordinating, as necessary, major plans, programs, projects, and regulatory activities existing or proposed by state and county agencies; and
  - (B) Formulating mechanisms to simplify, streamline, or coordinate interagency development and regulatory processes;
- [(5)] (4) [Collection and dissemination of] Planning information[.] system. Collecting, analyzing, maintaining, and disseminating data and information to further effective state planning, policy analysis and development, and delivery of government services by:
  - (A) Assembling, organizing, evaluating, and classifying existing data and performing necessary basic research in order to provide a common data base for governmental planning; [and]
  - (B) Planning, developing, implementing, and coordinating a statewide planning and geographic information system. The office shall be the lead agency responsible for planning and coordinating the establishment of a multi-agency, statewide geographic information system and the development of planning applications including spatial data analyses to enhance decision making; and

- [(B)] (C) Maintaining a centralized depository of state and national planning references;
- [(6)] Capital investment planning.
  - (A) In cooperation with the director of finance, establishing guidelines and criteria for capital improvement project appropriation proposals consistent with statewide planning goals and objectives and executive priorities; and
  - (B) Reviewing, in cooperation with the various state departments, the general and development plans of each county to identify statewide interests and to determine state capital improvement project needs of the plans;

In furtherance of these responsibilities, before each regular session of the legislature, the director of finance shall supply the governor with copies of the various capital improvement budget requests submitted by state agencies for inclusion in the proposed state executive budget. The director of finance shall also supply the governor with a list of proposed public works to be financed during the succeeding six years. Each county shall similarly provide the governor with a list of necessary capital improvements it expects to have financed during the succeeding six years. In preparing the lists, the counties shall indicate the contemplated means of financing each project. The office of state planning shall review the various capital improvement budget requests in relation to chapter 226 and any goals and objectives which the governor may prescribe. The office of state planning shall advise the governor on the various capital improvement budget requests and shall assist the governor as directed in formulating the capital improvements program;

- (7) [(5)] Land use planning. Developing and presenting the position of the State in all boundary change petitions and proceedings before the land use commission, assisting state agencies in the development and submittal of petitions for land use district boundary amendments, and conducting periodic reviews of the classification and districting of all lands in the State, as specified in chapter 205;
- [(8)] [(6)] Coastal and ocean policy management. Carrying out the lead agency responsibilities for the Hawaii coastal zone management program, as specified in chapter 205A. Also, developing and maintaining an ocean and coastal resources information, planning, and management system[; and] further developing and coordinating implementation of the ocean resources management plan, and formulating ocean policies with respect to the exclusive economic zone, coral reefs, and national marine sanctuaries;
- [(9)] [(7)] Regional planning and studies. Conducting plans and studies to determine:
  - (A) The capability of various regions within the State to support projected increases in both resident populations and visitors;
  - (B) The potential physical, social, economic, and environmental impact on these regions resulting from increases in both resident populations and visitors; [and]
  - (C) The maximum annual visitor carrying capacity for the State by region, county, and island[.]; and
  - (D) The appropriate guidance and management of selected regions and areas of statewide critical concern.

The studies in subparagraphs (A) to (C) shall be conducted at appropriate intervals, but not less than once every five years[.]; and

- (8) Regional, national, and international planning. Participating in and assuring that state plans, policies, and objectives are consistent, to the extent practicable, with regional, national, and international planning efforts.

**[[§225M-3]] Cooperation.** The office of [state] planning shall seek the widest possible cooperation from public and private agencies and individuals and the federal government to achieve the purposes of this chapter. It shall work closely with and assist the counties in the promotion of coordinated state and county planning.

Every state department, county agency, or other public or private agencies or individuals providing planning programs and services shall be encouraged to participate actively in the activities of the office of [state] planning. The executive heads of all state departments and agencies shall cooperate with the office of [state] planning by providing information as the governor [deems] and the director of business, economic development, and tourism necessary for the effective discharge of its duties.

Nothing in this chapter shall be deemed to delegate or detract in any way from the functions, powers, and duties conferred by law on any department or agency of the State or county.

**[[§225M-4]] Allocation of funds.** Any of the agencies of the State to which general or special appropriations are made, or a part of whose budget contains an allocation, or which makes an allocation of funds for planning and research, shall consult with the office of [state] planning to ensure that all expenditures are in accordance with, or in furtherance of the goals and objectives of the Hawaii State Plan. [The] After first consulting with the director of business, economic development, and tourism, the governor may withhold the expenditure of these funds by any agency until the governor is satisfied that the expenditures will implement those goals and objectives.

**SECTION 2.** All rights, powers, functions and duties of the office of state planning are transferred from the office of the governor and placed in the department of business, economic development, and tourism for administrative purposes only and the office shall be renamed as the office of planning.

All officers and employees of the office of state planning whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the office of state planning having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act.

**SECTION 3.** The Hawaii Revised Statutes is amended by replacing all references to "office of state planning" or like references with "office of planning," or like references, and "director of the office of state planning" or like references with "director of the office of planning" or like references, as the context requires.

**SECTION 4.** Statutory material to be repealed is bracketed. New statutory material is underscored.

**SECTION 5.** This Act shall take effect upon its approval.

(Approved July 1, 1996.)

A Bill for an Act Relating to Human Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that welfare reform remains a priority issue across the country. With a lagging economy and a shrinking state budget, the State has an even greater stake in welfare reform. Due to continuing budget restrictions and anticipated federal initiatives to reform the welfare system, major changes need to be made.

The legislature further finds that the people of the State support the provision of aid to those truly in need, but at the same time are disinclined to dispense aid unconditionally. The welfare system must focus on supplementing those who can help themselves to become employed and financially independent. The system must also provide job training when necessary and child care to encourage recipients to go to work.

The legislature finds that recipients of public assistance are often unable to secure employment that pays more than their benefits. This creates an incentive for them to remain on welfare and a disincentive to seek and retain employment. Disincentives to work must be removed and realistic incentives must be fashioned by integrating work and benefits in a way that will give recipients a chance to exit the welfare rolls. In other words, the system must be changed so that recipients are better off working than not working. On the other hand, recipients must be given support so that they have a real chance to earn wages that are sufficient and worth leaving welfare for.

The legislature also recognizes that although fiscal constraints must be imposed, we must not lose sight of the fact that the State's welfare system, in particular the Aid to Families with Dependent Children (AFDC) program, is a cash assistance program designed to raise the income of families with children living in poverty. The AFDC program is meant to lessen the hardships of poverty on children and to seek to ensure that all of the State's children are afforded the chance to be productive and contributing members of society. It is also designed to keep the family structure intact. Assistance is provided to parents of poor children with the belief that parents are best able to provide a nurturing and healthful environment necessary for raising children. As the nation and the State move toward reforming the AFDC program, we must keep in mind that this is a child welfare program and that the future of tens of thousands of Hawaii's children is at stake.

In fiscal year 1994-1995, more than 42,000 children in 21,480 families received approximately \$163,000,000 in cash assistance in Hawaii. Approximately ninety-five per cent of these families were headed by women and twenty-six per cent of the parents who received aid were disabled. Contrary to popular belief, most AFDC families do not remain on welfare rolls forever—sixty-two per cent remain for less than two years, with the average stay being thirty-five months.

The purpose of this Act is to address the current depressed fiscal conditions and anticipated federal and state program restrictions, while at the same time reforming the welfare system so that recipients of public assistance are given every chance to work and save money to leave the welfare rolls.

SECTION 2. Section 346-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Exempt household” means a household in which the adult is:

- (1) Ill, incapacitated, or disabled, as determined by the department on the basis of medical or other competent evidence;
- (2) Sixty-five years of age or older;
- (3) Needed in the household, as determined by the department, to care for another household member who is ill, incapacitated, or disabled;
- (4) The parent or other relative of a child who is not of school age and is personally providing care for the child, unless child care is provided by the department under this part;
- (5) Non-needy; or
- (6) A single parent responsible for the care and custody of a child under the age of eight weeks."

SECTION 3. Section 346-29, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No applicant shall be entitled to public assistance under this chapter who has sufficient income or other resources to provide a standard above that provided in this chapter, or who is an inmate of any public institution as long as the Social Security Act precludes the use of federal funds to provide public assistance to an inmate of such an institution, except that any inmate of a public institution who is otherwise eligible for medical assistance and who has been determined by the medical director of the institution as having a major illness or medical condition requiring the provision of medical care outside of the institution may receive assistance under this chapter. An inmate of an institution mentioned in this section may apply for assistance to begin after the inmate’s discharge from the institution. In determining the needs of an applicant or recipient for public assistance by the department, the department shall:

- (1) Disregard [such] the amounts of earned or unearned income and resources as required by the Social Security Act or other federal acts, to receive federal matching funds [and may disregard such additional amounts as these acts permit, now or in the future, to be disregarded;] and disregard from gross earned income twenty per cent plus \$200 and a percentage of the remaining balance of earned income consistent with federal regulations and requirements;
- (2) Consider as net income in all cases [such] the income as the Social Security Act or other federal acts may require the department to consider for receipt of federal matching funds and may consider [such] the additional income and resources as these acts may permit, now or in the future, to be considered;
- (3) Disregard a total of [\$1,000] \$5,000 in assets and the value of one motor vehicle in determining the needs of persons for financial assistance; provided that the amount to be disregarded shall not exceed standards under federally funded financial assistance programs. This paragraph shall not apply to persons eligible for Federal Supplemental Security Income benefits. In determining the needs of such persons, the department shall apply the resource retention requirements under the Federal Supplemental Security Income Program;
- (4) Apply the resource retention requirements under the Federal Supplemental Security Income Program in determining the needs of a single person for medical assistance only;
- (5) Apply the resource retention requirements under the Federal Supplemental Security Income Program in determining the needs of a family of two persons for medical assistance only and an additional \$250 for

- each additional person included in an application for medical assistance only;
- (6) Disregard amounts of emergency assistance granted under section 346-65;
  - (7) Not consider as income or resources any payment for services to or on behalf of, or any benefit received by, a participant under the JOBS program of part XI, other than wages. Wages earned by a participant while participating in the JOBS program shall be considered income of the participant, unless the wages are excluded or disregarded under any other law;
  - (8) Not consider as income or resources payment made to eligible individuals, eligible surviving spouses, surviving children or surviving parents as specified under Title I of the Civil Liberties Act of 1988, Public Law 100-383, which made restitution to individuals of Japanese ancestry who were interned during World War II;
  - (9) Allow the community spouse of an individual residing in a medical institution to maintain countable resources to the maximum allowed by federal statutes or regulations with provisions for increases, as allowed by the Secretary of Health and Human Services by means of indexing, court order, or fair hearing decree, without jeopardizing the eligibility of the institutionalized spouse for medical assistance;
  - (10) Allow an individual residing in a medical institution to contribute toward the support of the individual's community spouse, thereby enabling the community spouse to maintain the monthly maximum income allowed by federal statutes or regulations, with provisions for increases as allowed by the Secretary of Health and Human Services by means of indexing, court order, or fair hearing decree; and
  - (11) Consider the transfer of assets from the applicant's name to another name within the specified time period as required by federal regulations, known as the "lookback" period, prior to the application for medical assistance for care in a nursing home or other long-term care facility. Pursuant to rules adopted under chapter 91, the director may attribute any assets that have been transferred within the required federal "lookback" period from the applicant if the director determines that transfer of certain assets was made solely to make the applicant eligible for assistance under this chapter."

SECTION 4. Section 346-53, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This subsection does not apply to general assistance. The standard of need for families of given sizes shall equal the poverty level established by the federal government in 1993, pro-rated over a twelve-month period.

The assistance allowance provided shall be based on a percentage of the standard of need. [The] For exempt households, the assistance allowance shall be set at sixty-two and one-half per cent of the standard of need. For all other households, the assistance allowance shall be set [at] no higher than sixty-two and one-half per cent of the standard of need and set no lower than fifty per cent of the standard of need. The standard of need shall be determined by dividing the 1993 federal poverty level by twelve and rounding down the quotient. The remaining quotient shall be multiplied by [sixty-two and one-half] the per cent as set by the director by rules pursuant to chapter 91 and the final product shall be rounded down to determine the assistance allowance[.];



- (1) The department may reduce the assistance allowance as determined in this subsection for non-exempt households for the purpose of providing work incentives or services under part XI of this chapter;
- (2) No reduction shall be allowed that jeopardizes eligibility for or receipt of federal matching funds under the Social Security Act; and
- (3) Reductions shall be limited to no more than one per year.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval, and shall be repealed on June 30, 1998.

(Approved July 3, 1996.)

## ACT 301

S.B. NO. 2388

A Bill for an Act Relating to Human Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the delivery of long-term care in the nation has characteristically been fragmented and uncoordinated. Much of this has to do with how legislation on the federal, state, and local levels has evolved historically. Different programs have their own eligibility requirements, funding mandates, care benefits, provider participation regulations, administrative structure, and service delivery mechanisms. More than eighty federal, state, and local government programs offer direct or indirect assistance to persons with long-term care needs. Help may be in the form of cash, in-kind assistance, or goods and services. Five programs—medicaid, medicare, social services block grants, the Older Americans Act, and supplemental security income—offer major federal financial support for both community-based and institutional long-term care. Consequently, it is difficult to coordinate a comprehensive continuum of long-term care ranging from nursing homes to home- and community-based services for the elderly and the disabled.

The situation is similar in Hawaii. The department of health has partial responsibility for long-term care services for the elderly. The department's Maluhia home health center operates several programs including the home health care program which makes available medically necessary skilled home health care that is reimbursable by the home-bound client's medical insurance. The department of health also operates the Maluhia waitlist demonstration program—a medicaid waiver program established in collaboration with the department of human services. Over three hundred fifty individuals eligible for nursing home care remain in much more expensive acute care hospitals due to a lack of nursing beds. The waitlist program seeks to create a new category of adult residential care homes as an alternative to nursing homes to provide health and assisted living services to these waitlisted individuals.

The department's Maluhia PACE Hawaii project provides all-inclusive care to medicaid-eligible individuals aged fifty-five and older who are at the skilled nursing or intermediate care facility levels. Participants receive medical care; skilled nursing, rehabilitation, and preventive care; adult day health; personal care; and social services from an interdisciplinary team.

Most of the department's community hospitals offer long-term care beds. The department's Waimano training school and hospital (scheduled to close on June

30, 1998) provides long-term care—in the form of twenty-four hour residential services—for persons with developmental disabilities or mental retardation (DD/MR) who cannot be sustained in a community setting. Waimano also operates a medicaid waiver community-based support program for many of Waimano's former residents living in the community.

Furthermore, the department of health's developmental disabilities division, through its community services for the developmentally disabled branch, also has long-term care responsibilities for disabled adults.

On the other hand, programs in the department of human services are the locus of the bulk of the State's expenditures for long-term care. The department's community long-term care branch operates under the Med-QUEST division and serves the long-term care needs of the medicaid-eligible elderly, disabled, the DD/MR, and the catastrophically ill. The department's nursing home without walls program provides an array of health, social, and environmental services tailored to clients' individual needs in their own homes that are otherwise available only in institutions. The program requires that the severely and chronically ill and disabled must be able to be maintained at home with reasonable assurance of health and safety at less than institutional costs. The primary services used are personal care and skilled nursing. The branch is also involved in the home and community based services waiver consolidated program for the DD/MR population in which the department of health and private providers render direct services.

The legislature finds that a single entry point system is conducive to better coordination of long-term care services and to easier and simpler access to the long-term care system for both the elderly and the disabled. Without a coordinated single entry point system, elderly or disabled individuals enter the long-term care system on a hit-or-miss basis. A coordinated single entry point could provide a one-stop shop for all eligible individuals who would no longer need to search among all the individual available agencies for needed services. They would no longer be subject to multiple referrals or undergo multiple screens and assessments by different, and sometimes inappropriate, agencies. Thus, a coordinated single entry point seeks to make access to the long-term care system easier, simpler, and more equitable for the greatest number of eligible individuals. A single entry point does not mean access to long-term care is restricted to one unitary or central physical location. Instead, it means that an entire entry system is made available statewide in which access can be gained at any point in the same fair and uniform way.

A coordinated single entry point also seeks to rationalize service delivery and reduce system fragmentation by matching the individualized needs of clients with appropriate services from a full continuum of services ranging from nursing homes to home- and community-based supports. The existing system encompasses multiple programs with different mandates but often overlapping services. One goal of a coordinated single entry point is to create the full continuum of care which each individual categorical program embraces in rhetoric but cannot by itself achieve. A coordinated single entry point moves in this direction by integrating the operation of the three inter-related processes of client screening, assessment, and case management within one system. Services from previously disparate sources can be pooled. Clients can then be screened to determine financial and functional eligibility in a fair and uniform way at any point in the single entry point system. For example, a uniform screening and assessment tool may find that a person can avoid entering a nursing home and remain at home if provided with adequate home- or community-based supports. Entry through a coordinated single entry point system can thus enhance a client's awareness of service alternatives and improve chances for obtaining more appropriate services. Uniform case management, coordinated with screening and assessment, helps to assure that these services are effectively delivered. Because a full range of services is made available in one system, a single

entry point can flexibly deliver appropriate services even as clients' needs change over time.

A single entry point, through the coordinated operation of uniform screening, assessment, and case management, can also control nursing home utilization rates by determining nursing home eligibility and routing clients to less restrictive and less expensive alternatives. In addition to promoting the rational use of scarce nursing beds, a coordinated single entry point can also act as a gatekeeper in managing the allocation of home- and community-based long-term care resources.

The purpose of this Act is to create a unified single entry point system for elderly and disabled persons to obtain access to, and obtain a full range of appropriate services from, the long-term care system in Hawaii.

SECTION 2. (a) The department of human services shall design and develop a single entry point system for long-term care. For this purpose, there is created a temporary, ad hoc coordinating committee, attached to the department of human services for administrative purposes only, to design and develop a single entry point system for long-term care, including nursing home care and home- and community-based supports, for the elderly and disabled in Hawaii. The department shall serve as the lead agency and utilize the services of a facilitator when appropriate. Long-term care services shall include both nursing home care and home- and community-based services. Members shall serve without compensation.

The department shall convene and support an advisory committee made up of public and private agencies and consumer groups representative of the aging and disabled population, including the area agencies on aging and representatives from each county. The advisory committee shall review and provide input in policy and program options for a single entry point system.

(b) The department of human services and the coordinating committee shall adhere to the following broad guidelines:

- (1) Accommodate both elderly and disabled adults, using a comprehensive range of long-term care services, including both nursing home care and home- and community-based supports;
- (2) Adopt a flexible generic approach to determine eligibility and to assess clients based on functional limitations;
- (3) Design a system that makes the most efficient use of resources;
- (4) Attempt to benefit the greatest number while reasonably accommodating individuals with extreme needs;
- (5) Develop a standardized functional assessment for the elderly and disabled;
- (6) Design a continuing review process to ensure that case management functions do not unnecessarily restrict access to services; and
- (7) Develop a system whereby existing services can be placed in and accessed from a continuum of services available to both the elderly and the disabled through the unified single entry point system.

(c) The coordinating committee shall engage in actual, good faith negotiations to reach workable compromises and resolve differences among various programs that provide for the long-term care of the elderly and the disabled. Specifically, the committee shall attempt to determine whether:

- (1) Differing financial eligibility criteria can be reconciled, including whether differing funding streams can be usefully consolidated and made available to support services for both the elderly and the disabled;
- (2) Sufficient common ground exists for the use of standardized functional assessments for the elderly and the disabled and if provisions for supplementary specialist assessments are necessary, feasible, and can be made available;

- (3) Cross-training for entry staff is feasible or can be made adequate to handle the needs of all eligible individuals or, alternatively, whether sufficient "expert" knowledge and sophistication can be built in to whatever standardized tools that will be used;
- (4) Case management can be consolidated for both elderly and disabled populations;
- (5) If the power to authorize services is given to case management agencies, whether case managers will be allowed to provide direct services; and
- (6) Existing services can be placed in and accessed from a continuum of services available to both the elderly and the disabled through the coordinated single entry point system.

(d) The coordinating committee shall begin work and the process of good faith negotiations as soon as practicable but no later than two weeks after the effective date of this Act. The committee shall report in writing to the governor and the legislature by December 20, 1996, detailing the results of negotiations and recommending a timetable and process to implement a single entry point system. If necessary, the committee shall include in its report proposed legislation, including any necessary appropriations, to implement a single entry point system.

(e) The department of human services shall begin work on the development of the single entry point system no later than two weeks after the effective date of this Act. The department shall report in writing to the governor and the legislature by December 20, 1996, with a detailed plan for the organization of the single entry point system.

SECTION 3. Expenses for the work of coordinating and advisory committees shall be borne by existing budgeted funds of the department of human services, without the necessity for an appropriation under this Act.

SECTION 4. This Act shall take effect upon its approval.

(Approved July 3, 1996.)

## ACT 302

S.B. NO. 3042

A Bill for an Act Relating to Child Protective Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that reported incidents of child abuse have increased at a rate that will soon require significant resource re-allocation or meaningful system reform. Nearly twenty states have been sued in recent years to correct what one federal judge called "outrageous deficiencies" in child protective services. In response to efforts to improve the Hawaii system by many committed public employees, businesses, community groups, foundations and private citizens, in addition to executive departments and the judiciary, the legislature adopted senate concurrent resolution 89 H.D. 1 during the 1994 regular session which established the child welfare services reform task force for the purpose of developing a blueprint for reform in child protective services. Comprised of public and private sector representatives and funded by local and national foundations, the task force identified guidelines to provide child welfare services in a coordinated and comprehensive manner. The legislature finds that there is an urgent need to provide a responsible approach to reviewing and reforming the provision of child protective services.

Accordingly, the purpose of this Act is to establish a three-year pilot project for child protective and diversion services to be conducted as a public-private partnership. The legislature finds that such a partnership is essential to maintain an effective level of child protective services. Specifically, this Act establishes a multi-agency pilot project for child protective and diversion services within the department of human services which shall be assisted by the child protective services reform coordinating committee.

SECTION 2. For purposes of this Act:

“Committee” means the child protective services reform coordinating committee.

“Pilot project” means the child protective and diversion services pilot project.

SECTION 3. There is established a child protective and diversion services pilot project within the department of human services that shall be assisted by the department of education, the department of health, the office of youth services, and the judiciary. The committee shall provide assistance to the pilot project as requested by the director of human services. The pilot project shall be responsible for the development and training of public and private sector workers in the area of child protective and diversion services which shall include the establishment or operation of:

- (1) A statewide central intake service available by telephone that shall provide child welfare information and services;
- (2) Two sites, to be called “neighborhood places”, one urban and one rural, for service delivery by various public and private child welfare agencies;
- (3) Systems-change training for public and private sector child protective and diversion service workers; and
- (4) An evaluation component that compares the outcomes and processes of the pilot project with the existing provision of child protective services.

The department of human services, department of education, department of health, office of youth services and the judiciary, by means of a memorandum of agreement or other appropriate action, may transfer resources to the pilot project for the purposes and duration of this Act; provided the resources shall include personnel and equipment. The pilot project may work with tax exempt organizations certified under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to implement the purposes of this Act.

SECTION 4. There is established a child protective services reform coordinating committee which shall be attached to the department of human services for administrative purposes only. It shall be the duty of the committee to make recommendations to the public agencies participating in the pilot project regarding its implementation, which shall include:

- (1) Development of requests for proposals from the community;
- (2) Site selection of two neighborhood places, and the development of requests for proposals from the community;
- (3) Identification of pilot project goals, including the identification of a schedule and evaluation process;
- (4) Development and implementation of systems-change training programs; and
- (5) Coordination of financial resources, excluding the use of state funds, that may be necessary to effectuate the pilot project.

The committee, with the consent of the director of human services, may seek grants, receive gifts, funds, or donations of services-in-kind to effectuate the purposes of this Act. The child protective services reform coordinating committee shall consist of thirteen members appointed by the governor. The members shall include:

- (1) The director of human services, or a designated representative;
- (2) The director of health, or a designated representative;
- (3) The superintendent of education, or a designated representative;
- (4) The executive director of the office of youth services, or a designated representative;
- (5) One representative from the family court, who shall be selected from a list of nominees submitted by the chief justice of the supreme court;
- (6) One representative from the blueprint for change task force created by Senate Concurrent Resolution No. 89, H.D. 1, as adopted by the legislature during the 1994 regular session;
- (7) One representative from the Alliance for Health and Human Services;
- (8) One representative from a community service organization with experience with child protective or child welfare services;
- (9) Three representatives at-large; of which one person shall be employed at the department of human services child protective services unit; and one person shall be from each neighborhood place once the sites have been selected;
- (10) One member of the house of representatives, who shall be selected from a list of nominees submitted by the speaker of the house; and
- (11) One member of the senate, who shall be selected from a list of nominees submitted by the president of the senate.

The governor shall appoint the director of human services as the chairperson of the committee. The members of the committee shall serve without compensation and shall be exempt from the requirements of section 26-34, Hawaii Revised Statutes. The committee may adopt rules necessary for the purposes of this Act; provided that such rules shall be exempt from the public notice and public hearing requirements of chapter 91, Hawaii Revised Statutes.

**SECTION 5.** The director of human services may appoint a project coordinator and additional staff as necessary to carry out the functions of the pilot project and the committee. All staff shall be appointed without regard to chapters 76 and 77, Hawaii Revised Statutes.

**SECTION 6.** The child protective services reform coordinating committee shall:

- (1) Submit progress reports regarding the pilot project to the legislature on a semi-annual basis; provided that copies of the report shall be made available to interested community groups; and
- (2) Submit a progress report regarding the pilot project including legislative recommendations no later than twenty days prior to the convening of the 1997, 1998, and 1999 regular sessions.

**SECTION 7.** This Act shall take effect on July 1, 1996, and shall be repealed on June 30, 1999.

(Approved July 3, 1996.)

## ACT 303

S.B. NO. 2003

A Bill for an Act Relating to Family Child Care.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. It is the intent of the legislature that family child care homes be situated in normal residential surroundings so as to provide children with a home environment conducive to healthy and safe development. It is the public policy of the State to encourage child care facilities that emulate a healthy home environment.

The legislature declares this policy to be of statewide concern for the purpose of excluding family child care homes from municipal zoning regulations with regard to classifying the operation of family child care homes as other than a residential use or occupancy and to prohibit restrictions on the use of residential property as family child care homes.

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§46- Family child care homes; permitted use in residential areas. (a)**

For the purposes of zoning, family child care homes shall be considered a residential use of property and shall be a permitted use in all residentially designated zones, including but not limited to zones for single-family dwellings. No conditional use permit, variance, or special exception shall be required for residences used as family child care homes.

(b) For the purposes of this section, “family child care home” means a private home where six or fewer children are cared for.”

SECTION 3. Chapter 501, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§501- Family child care homes; permitted use in residential areas.**

(a) Family child care homes shall be considered a residential use. Notwithstanding any other law to the contrary, every recorded restriction or prohibition entered into whether by way of covenant, condition upon use or occupancy, or upon transfer of title to residential real property, which directly or indirectly restricts or prohibits family child care homes on residential real property is void.

(b) This provision shall not apply to:

- (1) Housing for older persons as defined by 42 United States Code section 3607(b)(2);
- (2) Limited-equity housing cooperatives created pursuant to chapter 421H;
- (3) Cooperative housing corporations created pursuant to chapter 421I;
- (4) Condominium property regimes created pursuant to chapter 514A; or
- (5) Townhouse projects that consist of a series of three or more individual dwelling units having architectural unity and a common wall between each adjacent unit and in which the owners of the units are members of an association which is responsible for common areas available for use by the members of the association.

(c) For the purposes of this section, “family child care home” means a private home where six or fewer children are cared for.”

SECTION 4. Chapter 502, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§502- Family child care homes; permitted uses in residential areas.**

(a) Family child care homes shall be considered a residential use. Notwithstanding any other law to the contrary, every recorded restriction or prohibition entered into whether by way of covenant, condition upon use or occupancy, or upon transfer of title to residential real property, which directly or indirectly restricts or prohibits family child care homes on residential real property is void.

(b) This provision shall not apply to:

- (1) Housing for older persons as defined by 42 United States Code section 3607(b)(2);
- (2) Limited-equity housing cooperatives created pursuant to chapter 421H;
- (3) Cooperative housing corporations created pursuant to chapter 421I;
- (4) Condominium property regimes created pursuant to chapter 514A; or
- (5) Townhouse projects that consist of a series of three or more individual dwelling units having architectural unity and a common wall between each adjacent unit and in which the owners of the units are members of an association which is responsible for common areas available for use by the members of the association.

(c) For the purposes of this section, “family child care home” means a private home where six or fewer children are cared for.”

SECTION 5. The department of the attorney general, in conjunction with the department of human services, the commission on persons with disabilities, the insurance commission, and the real estate commission, shall submit a report to the legislature not later than twenty days prior to the convening of the 1997 Regular Session. The report shall review and discuss issues of tort liability, the Americans with Disabilities Act, and any constitutional concerns as they may relate to limited-equity housing cooperatives, cooperative housing corporations, condominium property regimes, and townhouse projects as defined in this Act. The department of the attorney general shall also make recommendations as to whether such issues may or may not be resolved, and whether sections 3 and 4 of this Act should be amended to remove the exemptions applicable to limited-equity housing cooperatives, cooperative housing corporations, condominium property regimes, and townhouse projects as defined in this Act with the reasons therefor.

SECTION 6. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon approval.

(Approved July 3, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 304**

H.B. NO. 3380

A Bill for an Act Relating to the Housing Loan and Mortgage Programs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Act 291, Session Laws of Hawaii 1980, is amended by amending section 11 to read as follows:

“SECTION 11. **Issuance of revenue bond; amount authorized.** Revenue bonds may be issued by the [authority] housing finance and development corpora-



tion pursuant to part III, chapter 39 and [part II, chapter 356,] subpart B of part II of chapter 201E, Hawaii Revised Statutes, in an aggregate principal amount not to exceed [\$122,500,000] \$200,000,000 at such times and in such amounts as the [authority] housing finance and development corporation deems advisable for the purpose of undertaking and maintaining any of the housing loan programs under [part II of chapter 356,] subpart B of part II of chapter 201E, Hawaii Revised Statutes, relating to the funding or purchasing of eligible project loans.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 3, 1996.)

## ACT 305

S.B. NO. 2264

A Bill for an Act Relating to Services for the Indigent.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the civil legal needs of poor persons in Hawaii are not being met due to inadequate funding of organizations that provide these services. It was estimated that, in 1991, less than ten per cent of Hawaii’s low-income households with civil legal problems received legal assistance for those problems. Federal funding for indigent legal services was cut by twenty-five per cent in the early 1980s and was not restored thereafter. Although state general funds have been a major support for these programs since the federal cuts were made, this funding has not been sufficient to compensate for the federal cuts, nor has it been sufficient to ensure that organizations without federal funding can provide adequate service to the indigent community. As a result of inadequate funding, organizations providing legal services to indigents have been forced to freeze or cut staff, pay below-market salaries, and forego needed equipment purchases and other capital improvements. These budget restrictions have made it impossible for existing indigent legal services programs to meet the needs of all poor persons in Hawaii.

The legislature further finds that indigent persons should have equal access to justice, and that it is in the public interest to provide adequate funding to ensure this access. Because of their poverty, indigent persons are particularly vulnerable. Without adequate legal representation, indigent persons may lose their homes, jobs, medical coverage, welfare benefits, and social security benefits. Without adequate legal representation, indigent persons may:

- (1) Be forced to remain in abusive marriages;
- (2) Be discriminated against due to race, gender, age, or disability;
- (3) Be victimized by consumer fraud;
- (4) Lose ancestral family lands; or
- (5) Be unable to make adequate plans for their estates or for medical care in their last illnesses.

Without adequate legal representation, indigent persons often have no voice in public policy-making that affects their most vital interests.

The legislature further finds that the persons who pay the filing fee surcharge under this Act will benefit from it because unrepresented indigent litigants create inefficiencies in the judicial system. Most nonattorney litigants do not understand court procedures. As a result, judges and court staff must spend more time educating

these litigants than they must spend with litigants who have counsel. Moreover, although many disputes can be settled without resort to the judicial system, an unrepresented party is less likely to negotiate successfully with an opponent than is a party represented by counsel. The proceeds of this filing fee surcharge will be used to enable indigents to secure attorneys, and these attorneys will help to expedite their clients' cases, thus minimizing a substantial burden on the courts and enabling the courts to hear and decide the claims of nonindigent litigants more efficiently.

The purpose of this Act is to provide an additional source of funding for legal services to indigent persons, through the creation of a new court filing fee surcharge on civil cases.

SECTION 2. Chapter 607, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§607- Surcharge for indigent legal services.** (a) In addition to the costs and fees prescribed in section 607-5, any person in a civil action in the circuit court who is required to pay an initial filing fee shall pay an additional surcharge of \$25 at the time of the person's initial filing. Initial filings for which this surcharge shall be assessed include:

- (1) Complaints, petitions, interventions, applications for special proceedings, and answers containing one or more cross-claims or counter-claims; and
- (2) Third party complaints, but shall not include post-judgment civil process.

(b) In addition to the costs and fees prescribed in section 607-4, any person who files an action for summary possession in the district court shall pay an additional surcharge of \$10 at the time of the person's initial filing. Any person in a civil action in the supreme court who is required to pay an initial filing fee also shall pay an additional surcharge of \$25 at the time of the person's filing. No surcharge shall be assessed against:

- (1) Small claims cases;
- (2) Petitions for temporary restraining orders;
- (3) Petitions for protective orders;
- (4) Any party who has received the court's permission to proceed in forma pauperis; or
- (5) Any party proceeding on behalf of the county or State.

Surcharges subject to this section shall be limited to one payment per party.

(c) There is established a special fund to be known as the indigent legal assistance fund. The funds raised under subsections (a) and (b) shall be transmitted to the administrative director of the courts and deposited in the indigent legal assistance fund. All unobligated or unexpended funds as of June 30, 1999, shall revert to the general fund. Upon final disbursement of the remaining balances to the general fund on June 30, 1999, the indigent legal assistance fund shall be terminated.

(d) This fund shall be administered by the office of community services, or pursuant to contract with the office of community services. If the fund is administered pursuant to contract with the office of community services, the contractor shall be a nonprofit organization that has at least one year's experience in administering grants to providers of civil legal services for indigents. The fund administrator shall receive not more than five per cent of the total amount collected under this section each fiscal year as compensation for performing the duties under this section.

(e) The fund administrator shall annually accept applications for grants funded from the indigent legal assistance fund from organizations that provide civil legal assistance to indigent persons. Applications shall be received no later than April 15 for assistance in the following fiscal year. The fund administrator shall

determine the specific information required of the applicant and, at a minimum, shall require applicants to provide information concerning:

- (1) Their governance, staffing, and total annual budget;
- (2) Other funding sources;
- (3) Geographic area of service;
- (4) The number of clients served in the previous fiscal year; and
- (5) The nature and scope of services provided.

(f) To be eligible for assistance from the indigent legal assistance fund, an applicant shall meet all of the following standards at the time of application:

- (1) Be either a nonprofit organization incorporated and operated exclusively in Hawaii and determined by the Internal Revenue Service to be exempt from federal income tax or a program operated exclusively in Hawaii by an accredited nonprofit law school, which organization or program provides as its primary purpose and function civil legal services to indigent persons;
- (2) Have a governing board whose members have no material conflict of interest and serve without compensation;
- (3) Have bylaws or policies that describe the manner in which business is conducted, and policies that relate to nepotism and management of potential conflict of interest situations;
- (4) Have at least one year's experience in providing civil legal services to indigents;
- (5) Be licensed and accredited, as applicable, in accordance with the requirements of federal, state, and county governments;
- (6) Agree not to charge client fees for services that are funded in any part by a grant from the indigent legal assistance fund, except that token payments for costs and expenses shall not be considered fees;
- (7) Agree to use any grant received under this section exclusively to provide civil legal services to indigent persons; and
- (8) Have in place sound financial management systems, a client grievance procedure, a method of ensuring the quality of service provided, and a policy that provides that no person may interfere with any attorneys funded in whole or in part by this section in carrying out their professional responsibilities to their clients, as established by the Hawaii rules of professional conduct.

(g) Funds shall be distributed on a pro rata basis to organizations that meet the criteria in subsection (f), based upon the portion of their total budget expended in the prior year for civil legal services to indigent persons as compared to the combined total expended in the prior year for legal services by all qualifying organizations applying for funding. An applicant that provides services other than civil legal services to indigent persons may establish its proportionate entitlement to funds based upon financial statements which strictly segregate that portion of the organization's expenditures in the prior year which were devoted exclusively to the provision of civil legal services for indigents.

(h) As used in this section, unless the context otherwise requires:

"Civil legal services" means direct legal services provided by attorneys or by attorney-supervised staff to clients in civil matters, including judicial and administrative advocacy related to the civil legal problems of indigents.

"Indigent person" means:

- (1) Any individual whose income is not greater than one hundred twenty-five per cent of the official poverty line established by the Secretary of Health and Human Services under the Community Services Block Grant Act, 42 U.S.C. section 9902;

- (2) Any individual who is eligible for free services under the Older Americans Act or Developmentally Disabled Act; or
- (3) Any organization or client group whose purpose is to further the interests of indigent persons and which is at least fifty per cent composed of persons who meet the requirements of paragraph (1) or (2)."

SECTION 3. The commission on access to justice shall review the filing fee surcharge program created by this Act to determine whether it is meeting the civil legal needs of indigent persons and shall present its findings and recommendations to the legislature no later than January 1, 1998.

SECTION 4. The auditor shall conduct a management audit of the Legal Aid Society of Hawaii and shall issue its findings and, based on those findings, shall make a recommendation to the legislature no later than April 30, 1997, as to whether the Legal Aid Society of Hawaii should continue to receive funds from the indigent legal assistance fund.

SECTION 5. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect on July 1, 1996, and shall be repealed on June 30, 1999.

(Approved July 3, 1996.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

**ACT 306**

H.B. NO. 2991

A Bill for an Act Relating to Employment Security.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 383-7, Hawaii Revised Statutes, is amended to read as follows:

**"§383-7 Excluded service.** "Employment" does not include the following service:

- (1) Agricultural labor as defined in section 383-9 if it is performed by an individual who is employed by an employing unit:
  - (A) Which, during each calendar quarter in both the current and the preceding calendar years, paid less than \$20,000 in cash remuneration to individuals employed in agricultural labor; and
  - (B) Which had, in each of the current and the preceding calendar years:
    - (i) No more than nineteen calendar weeks, whether consecutive or not, in which agricultural labor was performed by its employees; or
    - (ii) No more than nine individuals in its employ performing agricultural labor in any one calendar week, whether or not the same individuals performed the labor in each week;
- (2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority [performed in any calendar quarter by an individual if the cash remuneration paid to the individual by an

employing unit for the service is less than \$225, and if the total cash remuneration paid to all individuals by an employing unit for the service is less than \$1,000 in each calendar quarter in both the current and preceding calendar years;] as set forth in section 3306(c)(2) of the Internal Revenue Code of 1986, as amended;

- (3) Service not in the course of the employing unit's trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employing unit to perform the service. For the purposes of this paragraph, an individual shall be deemed to be regularly employed to perform service not in the course of an employing unit's trade or business during a calendar quarter only if:
  - (A) On each of some twenty-four days during the quarter the individual performs the service for some portion of the day; or
  - (B) The individual was regularly employed as determined under subparagraph (A) by the employing unit in the performance of the service during the preceding calendar quarter;
- (4) (A) Service performed on or in connection with a vessel not an American vessel, if the individual performing the service is employed on and in connection with the vessel when outside the United States;
- (B) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed as an ordinary incident thereto, except:
  - (i) The service performed in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);
  - (ii) The service performed in connection with a vessel of ten net tons or less (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States) by an individual who is employed by an employing unit which had in its employ one or more individuals performing the service for some portion of a day in each of twenty calendar weeks all occurring, whether consecutive or not, in either the current or the preceding calendar year; and
  - (iii) Service performed in connection with the catching or taking of salmon or halibut for commercial purposes;
- (5) Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of the child's father or mother;
- (6) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter, except that to the extent that the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this chapter shall apply to those instrumentalities, and to services performed for those instru-

mentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided that if this State is not certified for any year by the Secretary of Labor under section 3304(c) of the federal Internal Revenue Code, the payments required of those instrumentalities with respect to that year shall be refunded by the department of labor and industrial relations from the fund in the same manner and within the same period as is provided in section 383-76 with respect to contributions erroneously collected;

- (7) Service performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions; and any service performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to the service, exempt from the tax imposed by section 3301 of the Internal Revenue Code of [1954;] 1986, as amended;
- (8) Service with respect to which unemployment compensation is payable under an unemployment system established by an act of Congress;
- (9) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the federal Internal Revenue Code (other than an organization described in section 401(a) or under section 521 of such Code), if:
  - (i) The remuneration for the service is less than \$50; or
  - (ii) The service is performed by a fully ordained, commissioned, or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of duties required by the order;
- (B) Service performed in the employ of a school, college, or university, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university;
- (10) Service performed in the employ of a foreign government (including service as a consular or other officer or employee of a nondiplomatic representative);
- (11) Service performed in the employ of an instrumentality wholly owned by a foreign government:
  - (A) If the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and
  - (B) If the United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;
- (12) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;
- (13) Service performed by an individual for an employing unit as an insurance agent or as an insurance solicitor, if all service performed by

- the individual for the employing unit is performed for remuneration solely by way of commission;
- (14) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;
  - (15) Service covered by an arrangement between the department and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by the employing unit's duly approved election, are deemed to be performed entirely within the agency's state;
  - (16) Service performed by an individual who, pursuant to the Federal Economic Opportunity Act of 1964, is not subject to the federal laws relating to unemployment compensation;
  - (17) Service performed by an individual for an employing unit as a real estate salesperson, if all service performed by the individual for the employing unit is performed for remuneration solely by way of commission;
  - (18) Service performed by a registered sales representative for a registered travel agency, when the service performed by the individual for the travel agent is performed for remuneration by way of commission;
  - (19) Service performed by a vacuum cleaner salesperson for an employing unit, if all services performed by the individual for the employing unit are performed for remuneration solely by way of commission;
  - (20) Service performed for a family-owned private corporation organized for profit that employs only members of the family who each own at least fifty per cent of the shares issued by the corporation, provided that:
    - (A) The private corporation elects to be excluded from coverage under this chapter;
    - (B) The election for exclusion shall apply to all shareholders and under the same circumstances;
    - (C) No more than two members of a family may be eligible per entity for exclusion under this paragraph;
    - (D) The exclusion shall be irrevocable for five years;
    - (E) The family-owned private corporation presents to the department proof that it has paid federal unemployment insurance taxes as required by federal law; and
    - (F) The election to be excluded from coverage shall be effective the first day of the calendar quarter in which the application and all substantiating documents requested by the department are filed with the department;

and

- (21) Service performed by a direct seller as defined in section 3508 of the Internal Revenue Code of 1986.

None of the foregoing exclusions (1) to (21) shall apply to any service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act is required to be covered under this chapter."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 3, 1996.)

**ACT 307**

H.B. NO. 4145

A Bill for an Act Relating to the Hawaii Hurricane Relief Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the destruction caused by Hurricane Iniki in 1992 resulted in an estimated \$1,600,000,000 in insured property losses to various areas of the State. Immediately after the hurricane, homeowners insurance, which included hurricane coverage, became difficult to obtain. Act 339, Session Laws of Hawaii 1993, created the Hawaii hurricane relief fund to encourage insurance companies to resume issuing homeowners' insurance policies in Hawaii. As a result of the law, insurance companies now issue homeowners' insurance policies that do not include coverage for hurricane risk. The Hawaii hurricane relief fund issues policies covering hurricane risk.

The legislature established several possible methods of funding the Hawaii hurricane relief program:

- (1) State revenue bonds;
- (2) Loan commitments from the federal government or any agency of the federal government, including federal disaster relief agencies;
- (3) Loan commitments such as lines-of-credit or standby bank facilities from financial institutions or other private sources; and
- (4) Any combination of the above.

Although revenue bonds are included as a possible means of financing the Hawaii hurricane relief fund, Act 339 failed to amend the revenue bond law to include this particular undertaking as a legitimate use of revenue bonds. The purpose of this Act is to include financing the Hawaii hurricane relief fund as a legitimate use of state revenue bonds.

SECTION 2. Section 39-51, Hawaii Revised Statutes, is amended:

1. By adding a new definition to be appropriately inserted and to read as follows:

““Policy of hurricane property insurance” means a policy or endorsement of insurance issued by the Hawaii hurricane relief fund under section 431P-10.”

2. By amending the definition of “revenue” to read as follows:

““Revenue” means the moneys collected, including any moneys collected from the State or any department, or any county or board, agency, or instrumentality thereof, from the rates, rentals, fees, and charges prescribed for the use and services of, and the facilities and commodities furnished by, an undertaking or the use and services and benefits of a loan program[.]; provided that the term shall include all insurance premium payments, assessments, surcharges, investment earnings, and all other income of the Hawaii hurricane relief fund.”

3. By amending the definition of “revenue bonds” as follows:

““Revenue bonds” means all bonds payable solely from and secured by the revenue, or user taxes, or any combination of both, of an undertaking or loan program or any loan made thereunder for which bonds are issued and as otherwise



provided in this part[.]; provided that the term shall include all bonds issued by the director of finance under the authority of section 10(a), Act 339, Session Laws of Hawaii 1993, as amended, for the purposes of the hurricane bond loan fund.”

SECTION 3. Section 39-52, Hawaii Revised Statutes, is amended to read as follows:

“**§39-52 Declaration of policy.** It is declared to be the policy of the State that any department acquiring, purchasing, constructing, reconstructing, improving, bettering, or extending an undertaking or establishing or administering a loan program pursuant to this chapter or providing policies of hurricane property insurance to the general public, shall manage the undertaking [or], loan program, or the Hawaii hurricane relief fund in the most efficient manner consistent with sound economy and public advantage, and consistent with the protection of bondholders.”

SECTION 4. Section 39-54, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The issuance of revenue bonds for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking [or]; the establishment and administration of any loan program authorized by law; or the coverage of policies of hurricane property insurance issued by the Hawaii hurricane relief fund shall be authorized:

- (1) By a resolution or resolutions of the governing body of the department, which may be adopted at the same meeting at which the same are introduced by a majority of all the members of the governing body of the department then in office, and shall take effect immediately upon filing with the director of finance; or
- (2) By a certificate or certificates of a department head, which shall take effect immediately upon filing with the director of finance.”

SECTION 5. Section 39-60, Hawaii Revised Statutes, is amended to read as follows:

“**§39-60 Covenants in resolution or certificate authorizing issuance of revenue bonds.** Any resolution or certificate authorizing the issuance of revenue bonds pursuant to this part may contain covenants as to:

- (1) The purpose or purposes to which the proceeds of sale of the revenue bonds shall be applied and the use and disposition thereof;
- (2) The use and disposition of the revenue of the undertaking [or], the Hawaii hurricane relief fund, or the loan program for which the revenue bonds are to be issued, or the user taxes derived therefrom, or both revenue and user taxes, to the extent pledged to the payment of the revenue bonds, including the priority of payments from the revenue and the creation and maintenance of reserves and the investment thereof;
- (3) The issuance of other or additional revenue bonds payable from the revenue of the loan program, the Hawaii hurricane relief fund, or of the undertaking, or the user taxes derived therefrom, or both revenue and user taxes, to the extent pledged to the payment of the revenue bonds;
- (4) The operation, maintenance, and repair of the undertaking or the administration, operation, and maintenance of the loan program[.]; or the Hawaii hurricane relief fund;
- (5) The insurance to be carried on an undertaking or on the security for the Hawaii hurricane relief fund, or a loan program and the use and

disposition of insurance proceeds, the insurance policies being by this section authorized to be carried, and no undertaking shall have recourse to the state insurance fund for the repair or replacement of any property in the undertaking, or for payment of claims under chapter 386 (relating to workers' compensation);

- (6) Books of account and the inspection and audit thereof; and
- (7) The terms and conditions upon which the holders of the revenue bonds or any proportion of them or any trustee therefor shall be entitled to the appointment of a receiver by any court of competent jurisdiction, which court shall have jurisdiction in the proceedings, and which [the] receiver may enter and take possession of the undertaking, operate, maintain, and repair the same, enforce or foreclose loans made under a loan program, impose and prescribe rates, rentals, fees, or charges, collect, receive, and apply all revenue, and receive and apply all user taxes, thereafter arising therefrom in the same manner and to the same extent as the department itself might do;

provided that all covenants shall be subject to review by the governor; and provided further that the provisions of this section with respect to user taxes shall be applicable only if the legislature in the specific act or acts authorizing the issuance of the revenue bonds has provided that the revenue bonds may be paid from and secured by the user taxes derived from an undertaking.

The provisions of this part and any resolution or certificate shall be a contract with the holder or holders of the revenue bonds. The duties of the department, its governing body and department head, pursuant to this part, and any resolution or certificate shall be enforceable by any bondholder, by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction."

SECTION 6. Section 39-62, Hawaii Revised Statutes, is amended to read as follows:

**"§39-62 Use of revenue and user taxes [of] by any undertaking [or], loan program[.], or the Hawaii hurricane relief fund.** Whenever any revenue bonds have been issued pursuant to this part for an undertaking [or], a loan program, or the Hawaii hurricane relief fund, the revenue, or the user taxes, or combination of both, of the undertaking [or], loan program, or fund from which the revenue bonds are payable and by which they are secured shall be deposited in a special fund and shall be appropriated, applied, or expended in the amount necessary therefor for the following purposes and in the order of priority as the department shall provide in the resolution or certificate authorizing the issuance of revenue bonds pursuant to this part:

- (1) To pay when due all revenue bonds and interest thereon issued for the undertaking [or], loan program, or the Hawaii hurricane relief fund for the payment of which the revenue, or user taxes, or combination of both, is or shall have been pledged, charged, or otherwise encumbered, including reserves therefor;
- (2) To pay or provide for the payment of the cost of operation, maintenance, and repair of the undertaking, or to pay or provide for the payment of administering, operating, and maintaining the loan program, including reserves therefor;
- (3) For such purposes, within the jurisdiction, powers, duties, and functions of the department, including the creation and maintenance of reserves, as shall have been covenanted in any resolution or resolutions or certificate or certificates of the department providing for the issuance of revenue bonds;

- (4) To reimburse the general fund of the State for all bond requirements for general obligation bonds which are or shall have been issued for the undertaking [or], loan program, or the Hawaii hurricane relief fund, or to refund any general obligation bonds, except insofar as the obligation of reimbursement has been or shall be canceled by the legislature, the bond requirements being the interest on term and serial bonds, sinking fund for term bonds, and principal of serial bonds maturing the following year;
- (5) To provide for betterments and improvements to the undertaking or expansion of the loan program[,] or the Hawaii hurricane relief fund including reserves therefor; and
- (6) To provide special reserve funds and other special funds as are or may be created by law.

The appropriation, application, or expenditure of amounts deposited in the special fund pursuant to this section shall be accounted for on a fiscal year basis. Unless and until adequate provision has been made for the foregoing purposes, the State shall not have the right to transfer to its general fund or any special fund or to apply to any other purposes any part of the revenue or user taxes pledged to the payment of revenue bonds of the undertaking or loan program."

SECTION 7. Section 431P-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The Hawaii hurricane relief fund shall have the following general powers:

- (1) To sue and be sued;
- (2) To make and alter policies for its organization and internal administration;
- (3) To adopt rules in accordance with chapter 91 to effectuate the purposes of this chapter;
- (4) To borrow moneys, including but not limited to moneys from state or federal sources and to issue notes or other obligations of the fund for the purposes of providing funds for any of its purposes as authorized by the legislature from time to time;
- (5) To pledge [or], assign, or grant a security interest in all or any part of the moneys, rents, charges, assessments, or other revenue and any proceeds thereof derived by the fund; [and] provided that any pledge, assignment, or grant of security interest shall constitute a lien and security interest on such money, rents, charges, assessments, or other revenue, and any proceeds thereof to the extent and with the priority set forth in the document establishing the pledge, assignment, or security interest, without the necessity for physical delivery, recording, or further act; and provided further that in effectuating any pledge, assignment, or grant of security interest, the fund may do either or both of the following:
  - (A) Transfer possession of collateral to its secured parties; or
  - (B) Execute and cause to be filed at the bureau of conveyances of the State of Hawaii, Uniform Commercial Code financing statements for the purpose of providing notice to third parties of a pledge, assignment, or grant of security interest; provided that any failure to file a financing statement or the filing of a financing statement that contains incomplete or inaccurate information shall not affect the perfected lien and security interest of the pledge, assignment, or grant of security interest; and

- (6) Enter into contracts as necessary to effectuate the purposes of this chapter.”

SECTION 8. Section 431P-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The fund shall establish outside the state treasury a hurricane reserve trust fund and any accounts thereunder and any other trust fund necessary to carry out the purposes of this chapter. Moneys deposited in the hurricane reserve trust fund and any accounts thereunder or any other trust fund shall be held by the fund, as trustee, in a depository as defined in section 38-1 or according to a similar arrangement at the discretion of the board[.], including, but not limited to, trust or custodial accounts created for the benefit of the fund’s secured parties under contractual claims financing arrangements. These moneys may be invested and reinvested in accordance with the plan of operation. Disbursements from the trust funds shall not be subject to chapter 103D and shall be made in accordance with procedures adopted by the board.”

SECTION 9. Section 11, Act 339, Session Laws of Hawaii 1993, is repealed.

[“SECTION 11. The state supreme court shall have exclusive and original jurisdiction over any controversy or dispute regarding the financing of the Hawaii hurricane relief fund and the hurricane reserve trust fund through the issuance of revenue bonds or general obligation bonds, and the security provisions thereof and the imposition and collection of any rates and charges to repay or provide security for the bonds; provided that the jurisdiction be limited to the applicability of Article VII of the Constitution of the State of Hawaii to these matters.”]

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved July 3, 1996.)

## ACT 308

H.B. NO. 2975

A Bill for an Act Relating to Drugs.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to increase existing penalties for the possession or distribution of methamphetamines to counter increased property and violent crimes associated with the use of this dangerous drug.

SECTION 2. Section 712-1241, Hawaii Revised Statutes, is amended to read as follows:

“**§712-1241 Promoting a dangerous drug in the first degree.** (1) A person commits the offense of promoting a dangerous drug in the first degree if the person knowingly:

- (a) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:

- (i) One ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or
- (ii) One and one-half ounce or more, containing one or more of any of the other dangerous drugs; or
- (b) Distributes:
  - (i) Twenty-five or more capsules, tablets, ampules, dosage units, or syrettes containing one or more dangerous drugs; or
  - (ii) One or more preparations, compounds, mixtures, or substances of an aggregate weight of:
    - (A) One-eighth ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or
    - (B) Three-eighths ounce or more, containing any other dangerous drug; or
- (c) Distributes any dangerous drug in any amount to a minor.
- (2) Promoting a dangerous drug in the first degree is a class A felony.

(3) Notwithstanding any law to the contrary, if the commission of the offense of promoting a dangerous drug in the first degree under this section involved the possession or distribution of methamphetamine, or any of its salts, isomers, and salts of isomers, the person convicted shall be sentenced to an indeterminate term of imprisonment of twenty years with a mandatory minimum term of imprisonment, the length of which shall be not less than one year and not greater than ten years, at the discretion of the sentencing court. The person convicted shall not be eligible for parole during the mandatory term of imprisonment."

SECTION 3. Section 712-1242, Hawaii Revised Statutes, is amended to read as follows:

**"§712-1242 Promoting a dangerous drug in the second degree.**

- (1) A person commits the offense of promoting a dangerous drug in the second degree if the person knowingly:
- (a) Possesses twenty-five or more capsules, tablets, ampules, dosage units, or syrettes, containing one or more dangerous drugs; or
  - (b) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:
    - (i) One-eighth ounce or more, containing methamphetamine, heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or
    - (ii) One-fourth ounce or more, containing any dangerous drug; or
  - (c) Distributes any dangerous drug in any amount.

(2) Promoting a dangerous drug in the second degree is a class B felony.

(3) Notwithstanding any law to the contrary, if the commission of the offense of promoting a dangerous drug in the second degree under this section involved the possession or distribution of methamphetamine, or any of its salts, isomers, and salts of isomers, the person convicted shall be sentenced to an indeterminate term of imprisonment of ten years with a mandatory minimum term of imprisonment, the length of which shall be not less than six months and not greater than five years, at the discretion of the sentencing court. The person convicted shall not be eligible for parole during the mandatory period of imprisonment."

SECTION 4. Section 712-1243, Hawaii Revised Statutes, is amended to read as follows:

“§712-1243 Promoting a dangerous drug in the third degree. (1) A person commits the offense of promoting a dangerous drug in the third degree if the person knowingly possesses any dangerous drug in any amount.

(2) Promoting a dangerous drug in the third degree is a class C felony.

(3) Notwithstanding any law to the contrary, if the commission of the offense of promoting a dangerous drug in the third degree under this section involved the possession or distribution of methamphetamine, the person convicted shall be sentenced to an indeterminate term of imprisonment of five years with a mandatory minimum term of imprisonment, the length of which shall be not less than thirty days and not greater than two-and-a-half years, at the discretion of the sentencing court. The person convicted shall not be eligible for parole during the mandatory period of imprisonment.”

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 6. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 3, 1996.)

**Note**

1. No bracketed material.

**ACT 309**

H.B. NO. 2452

A Bill for an Act Relating to the Public Employees' Health Fund.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the present governance structure to determine and fund health benefits for public employees and retirees is not only cumbersome and inflexible, but does not foster cost-efficiency. Benefits are statutorily established and administered by an independent board of trustees within a fixed statutory framework. At the same time, public employer contributions for these health benefits are negotiated separately through collective bargaining agreements with public employee organizations. Consequently, there is little connection between benefit levels and costs, and limited latitude to design benefit packages that minimize costs and better meet the health care needs of employees.

The legislature further finds that public employers and public employee organizations should be involved in determining health care coverage and costs because health benefits have not only become a significant component of the total compensation package for public employees, but represent a significant cost to public employers. The employer-union trust concept for determining and administering health benefits provides a mechanism for linking benefit levels and costs, as well as the necessary flexibility to establish appropriate health benefits coverage.

The purpose of this Act is to:

- (1) Establish a timetable to proceed with the conversion to an employer-union trust concept for determining and administering public employee and retiree health benefits; and

- (2) Mandate that public employers and public employee organizations work together on this effort.

SECTION 2. The director of finance shall establish a committee comprised of representatives from state and county public employers and public employee organizations to develop and recommend a proposal to implement an employer-union trust concept for determining and administering public employee and retiree health benefits. The proposal shall include but not be limited to a suggested trust structure and necessary statutory changes to chapters 87 and 89, Hawaii Revised Statutes. The director of finance shall submit a report on the proposal to the legislature no later than twenty days prior to the convening of the regular session of 1997. The committee established by the director of finance shall be exempt from chapters 91, 92, and 92F, Hawaii Revised Statutes.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 3, 1996.)

## ACT 310

S.B. NO. 2333

A Bill for an Act Relating to Purchases of Services.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 42D-22, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A purchase of service agreement may be authorized for a period not to exceed [two] four years, except as provided in section 42D-12.”

SECTION 2. Act 194, Session Laws of Hawaii 1992, is amended by amending section 20 to read as follows:

“SECTION 20. This Act shall take effect on July 1, 1992, and shall be repealed on July 1, [1996;] 1998; provided that sections 42D-1, 42D-2, 42D-3, 42D-4, 42D-5, 42D-6, 42D-7(a), 42D-8, 42D-9, 42D-12(a), 42D-21(b) and (c), 42D-23, 42D-24(a), 42D-25, 42D-31, 42D-32, 42D-33, and 42D-34 shall be reenacted in the form in which they read on the day before the approval of this Act.”

SECTION 3. (a) The responsibility for all purchase of service contracts under chapter 42D, Hawaii Revised Statutes (HRS), is transferred to the state procurement office effective July 1, 1998. During the interim period from the effective date of this Act to July 1, 1998, the administrator of the state procurement office shall prepare for the transfer of the responsibility for purchase of service contracts. Effective July 1, 1998, the purchase of service system shall be transferred from chapter 42D, HRS, to chapter 103D, HRS, to provide for the procurement of all services under one chapter.

During the two-year transition period, the administrator of the state procurement office shall work with purchase of service providers and affected departments to develop and design a concrete, detailed, and comprehensive procedure to process purchase of service contracts to replace the purchase of service contract procedures presently provided in chapter 42D, HRS; provided that in the design of the procedure the administrator shall establish an advisory council or councils to assist in the

processing of such contracts. Each department involved in the purchase of service system shall fully cooperate with the administrator at section, branch, division, and departmental levels.

Toward this end the administrator shall also develop and implement a transition plan to develop necessary and desirable planning and procurement procedures. The transition plan shall be completed no later than December 31, 1996, and may be prepared by a consultant hired by the administrator. The transition plan shall include, but not be limited to:

- (1) Planning procedures and processes that establish criteria for developing:
  - (A) Purchase of service contract requirements, including the manner and need for provider input into the executive decision making process;
  - (B) A contract evaluation mechanism;
  - (C) A contract extension evaluation mechanism;
  - (D) A needs assessment mechanism; and
  - (E) A defined schedule necessary to implement the purchase of service system.
- (2) Developing procurement procedures, if necessary, for:
  - (A) Chapter 103D, HRS, including consideration of whether a separate procurement process for purchase of service is desirable; and
  - (B) The rulemaking process.

SECTION 4. By December 31, 1996, the administrator shall submit a report to the legislature detailing and explaining the proposed new procedures to process purchase of service contracts, together with a draft of any proposed legislation necessary to implement the administrator's proposals.

SECTION 5. To effectuate the transition plan:

- (1) One Planner VI shall be loaned from the office of state planning to the state procurement office; and
- (2) One program specialist and one clerical staff person shall be loaned to the state procurement office from any of the departments which use the purchase of service system.

No officer or employee of the State having tenure loaned to the state procurement office shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges as a consequence of this Act.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$90,000, or so much thereof as may be necessary for fiscal year 1996-1997, for operating expenses necessary to carry out the purposes of this Act.

SECTION 7. The sum appropriated shall be expended by the state procurement office for the purposes of this Act.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect on June 30, 1996.

(Approved July 3, 1996.)



## ACT 311

S.B. NO. 3262

A Bill for an Act Relating to Capital Loan Program.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to amend the capital loan program to ease the borrowing terms for small business concerns in counties with populations of less than 150,000.

SECTION 2. Section 210-6, Hawaii Revised Statutes, is amended to read as follows:

**“§210-6 Direct loans, terms, and restrictions.** (a) The department of business, economic development, and tourism may make loans to small business concerns for the financing of plant construction, conversion, expansion, the acquisition of land for expansion, the acquisition of equipment, machinery, supplies, or materials, or for the supplying of working capital. The loans may be made in conjunction with loans made by other financial institutions, including the SBA. Where the loans made by the department are secured, the security may be subordinated to the loans made by other financial institutions, when the subordination is required in order to obtain loans from such institutions. The necessity for and the extent of security required in any loan shall be determined by the director of business, economic development, and tourism.

(b) The department may make loans to business concerns located in a county with a population of less than 150,000; provided that the interest on loans made under this subsection shall bear simple interest at the rate of three per cent below the prime rate or at a rate of five and one-half per cent a year, whichever is lower. For purposes of this subsection, the prime rate shall be determined on January 1 and July 1 of each year, and shall be the rate charged by the two largest banks in the State of Hawaii identified by the department of commerce and consumer affairs. Should there be a difference in rate charged by the institutions, the lower of the two shall be utilized. Payments required under loans made under this subsection may be deferred, but no loans made under this subsection shall be forgiven.

[(b) The] (c) Except as may be expressly provided otherwise for loans made under subsection (b), the foregoing powers shall be subject[, however,] to the following restrictions and limitations:

- (1) No loans shall be granted unless financial assistance is not available to the applicant. The condition may be waived by the director for participation loans with a private financial institution[.];
- (2) The amount of the loan or loans to any one applicant at any one time shall in no case exceed a total of \$1,000,000[.];
- (3) No loan shall be made for a term exceeding twenty years[.];
- (4) Each loan shall bear simple interest at a rate of one per cent below the prime rate or at a rate of seven and one-half per cent a year, whichever is lower. For purposes of this paragraph, the prime rate shall be determined on January 1 and July 1 of each year, and shall be the rate charged by the two largest banks in the State of Hawaii identified by the department of commerce and consumer affairs. Should there be a difference in rate charged by the institutions, the lower of the two shall be utilized[.];
- (5) The commencement date for the repayment of the first installment on the principal of each loan may be deferred by the director, but in no

event shall such initial payment be deferred in excess of five years[.];  
and

- (6) The payment of interest on the principal of a loan may be deferred by the director, but in no event shall interest payments be deferred in excess of two years from the date of issuance of the loan.

[(c) Any] (d) Except as may be expressly provided otherwise for loans made under subsection (b), any restriction or limitation in subsection [(b)] (c) may be waived at the director's discretion where the applicant is a reuse or recycling business that meets the following criteria:

- (1) The business has potential to have an impact on overall solid waste reduction and achievement of the State's reduction goals;
- (2) The business addresses the alternative management of wastes identified by the solid waste disposal facility operators as problematic;
- (3) The business maximizes economic benefits through import reduction or an increase in the tax base;
- (4) The business has potential for job creation; and
- (5) The business has a plan that accurately reflects detailed and justifiable expenses and revenues, shows potential for profit, and an ability to meet market demand for end products."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 1996, and shall be repealed on June 30, 1999; provided that section 210-6, Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the approval of this Act.

(Approved July 3, 1996.)

## ACT 312

H.B. NO. 3809

A Bill for an Act Relating to the Signs Required Where Tobacco Products Are Sold.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 709-908, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) Signs using the statement, ["THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN IS PROHIBITED"], "The sale of tobacco products to persons under eighteen is prohibited", shall be posted on or near any vending machine in letters at least one-half inch high and at or near the point of sale of any other location where tobacco products are sold in letters at least [one] one-half inch high."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 3, 1996.)

## ACT 313

S.B. NO. 2280

A Bill for an Act Relating to Cigarette Sales by Mobile Food Vendors.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 328K-7, Hawaii Revised Statutes, is amended to read as follows:

**“[[§328K-7]] Cigarette sales from vending machines[.] and by lunch wagons prohibited.** (a) The sale or distribution at no charge of cigarettes [from vending machines] by the following methods is prohibited:

- (1) From cigarette vending machines unless the vending machine is located in a bar, cabaret, or any establishment for which the minimum age for admission is eighteen[.]; or
- (2) From a lunch wagon engaging in any sales activity within one thousand feet of any public or private elementary or secondary school grounds.

(b) Violations of subsection (a), including placement of a cigarette vending machine in a location other than a bar, cabaret, or any establishment for which the minimum age for admission is eighteen, are subject to a fine of up to \$1,000 per day for each violation.

(c) As used in this section[, “cigarette”:

“Cigarette vending machine” means a self-service device that dispenses cigarettes, cigars, tobacco, or any other product containing tobacco.

“Lunch wagon” means a mobile vehicle designed and constructed to transport food and from which food is sold to the general public and includes, but is not limited to manapua trucks.

“Sell” or “sale” means to solicit and receive an order for; to have, keep, offer, or expose for sale; to deliver for value or in any other manner than purely gratuitously; to peddle; to keep with intent to sell; or to traffic in.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved July 3, 1996.)

## ACT 314

S.B. NO. 2913

A Bill for an Act Relating to the Tax Liability of Contractors Contracting With the State or Counties.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 103-53, Hawaii Revised Statutes, is amended to read as follows:

**“§103-53 [Prerequisite for final settlement of contracts] Contracts with the State or [subdivisions thereof.] counties; tax clearances, assignments.** (a) All state and county officers and agents making contracts on behalf of the State or any [political subdivision thereof] county shall [withhold payment in the final settlement of the contracts until the receipt of a] require, as a prerequisite to entering into these

contracts, tax [clearance] clearances from the director of taxation and the Internal Revenue Service to the effect that all [delinquent] tax returns due have been filed, and all taxes, interest, and penalties levied or accrued under [state statutes] the provisions of title 14 that are administered by the department of taxation and under the Internal Revenue Code against the contractor have been paid[; provided that if, when notice of assignment of any contract is given to the State or any subdivision thereof by the assignee of the contract, the assignee is not informed upon the assignee's request to the director for the information that there are any delinquent taxes due to the State or subdivision thereof, then this section shall not apply as to so much of the amount payable under the contract as is owing to the assignee].

(b) Notwithstanding the provisions under sections 40-57 and 40-58, if a contractor fails to timely file all tax returns and pay all taxes, interest, and penalties due to the State or Internal Revenue Service during the term of a contract, the state or county contracting officer or agent shall immediately assign any progress payment due to the contractor, if any (provided such payment is not subject to any restriction or encumbrance), to the State payable to the department of taxation or to the Internal Revenue Service to the credit of the contractor, whichever the case may be; provided that the department of taxation may first offset its tax debt against the sum owed to the contractor. The state or county contracting officer or agent shall assign as many progress payments as necessary to cover the amount of the tax delinquency.

(c) All state and county contracting officers or agents shall withhold payment in the final settlement of a contract until the receipt of tax clearances from the director of taxation and the Internal Revenue Service. Notwithstanding sections 40-57 and 40-58, if a contractor fails to provide the tax clearances within six months of the notice of final settlement or completion date of the contract, the state or county contracting officer or agent shall assign the final settlement payment in an amount not to exceed the tax liability to the department of taxation or Internal Revenue Service; provided that the department of taxation may first offset its tax debt against the sum owed to the contractor.

(d) Any assignment of a contract shall require the assignee, as a condition precedent to the assignment, to first obtain a bulk sales certificate if required under section 237-43, and present the certificate, or tax clearance as provided under subsection (a) if a bulk sales certificate is not required, to the state or county contracting officer or agent.

(e) Subsection (a) shall not apply to:

(1) Any procurement of less than \$10,000 that qualifies as a small purchase under section 103D-305, except that any state or county department or contracting agency may apply subsection (a) to contracts of less than \$10,000; and

(2) Emergency purchases as set forth in section 103D-307.

(f) This section shall not apply to a contractor if the department of taxation certifies that the contractor is in good standing under a plan in which delinquent taxes are being paid to the department of taxation (and the Internal Revenue Service, if applicable) in installments.

(g) Any officer or employee of any governmental agency who intentionally or knowingly violates any provision under this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(h) The provisions of subsections (a), (b), (c) and (d) shall not apply to the extent and during the period that the validity of the taxes, penalties, or interest is being contested in an administrative or judicial appeal with the department of taxation or Internal Revenue Service."

SECTION 2. Section 237-45, Hawaii Revised Statutes, is amended to read as follows:

**“§237-45 [Prerequisite for final settlement of contracts] Contracts with the State or [subdivisions thereof.] counties; tax clearances, assignments.** All state and county officers and agents making contracts on behalf of the State or [any political subdivision thereof] county shall [withhold payment in the final settlement of the contracts until the receipt of a certificate from the department of taxation to the effect that all taxes levied or accrued under this chapter against the contractor with respect to the contracts have been paid.] do so in accordance with section 103-53.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval, and shall apply to contracts entered into on or after the effective date of this Act.

(Approved July 3, 1996.)

## ACT 315

S.B. NO. 659

A Bill for an Act Relating to the Environment.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 128D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§128D- Limitation of liability for heavy fuel oil releases.** (a) Notwithstanding any law to the contrary, the liability of any person under section 128D-6 for any release of heavy fuel oil from a tank barge carrying heavy fuel oil interisland shall not exceed \$700,000,000.

(b) For the purposes of subsection (a):

“Heavy fuel oil” includes petroleum that is no. 6 technical grades of fuel oil and other grades such as navy special fuel oil and bunker C.

“Release of heavy fuel oil” means a release subject to the federal Oil Pollution Act of 1990.

“Tank barge” means any vessel that carries oil in bulk as cargo or in residue and is not equipped with a means of self propulsion.”

SECTION 2. New statutory material is underscored.<sup>1</sup>

SECTION 3. This Act shall take effect on June 30, 1996.

(Became law on July 3, 1996, without the Governor’s signature, pursuant to Art. III §16, State Constitution.)

### Note

1. Edited pursuant to HRS §23G-16.5.

## PROPOSED CONSTITUTIONAL AMENDMENTS S.B. NO. 2211

A Bill for an Act Relating to School Construction Projects.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to propose an amendment to Article VII, section 11, of the the Hawaii state constitution to allow appropriations out of the state educational facilities improvement special fund to be made for more than three years.

This will allow the State to leverage planning and design moneys and to proceed with and realize the benefits of "design-build" contracts for certain high-priority projects without up-front construction funds, which under current arrangement would be subsequently appropriated.

SECTION 2. Article VII, section 11, of the Constitution of the State of Hawaii is amended to read as follows:

### **"LAPSING OF APPROPRIATIONS**

**Section 11.** All appropriations for which the source is general obligation bond funds or general funds shall be for specified periods[, and no]. No such appropriation shall be made for a period exceeding three years[.]; provided that appropriations from the state educational facilities improvement special fund may be made for periods exceeding three years to allow for construction or acquisition of public school facilities. Any such appropriation or any portion of any such appropriation [which] that is unencumbered at the close of the fiscal period for which the appropriation is made shall lapse; provided that no appropriation for which the source is general obligation bond funds nor any portion of any such appropriation shall lapse if the legislature determines [such] that the appropriation or any portion of [such] the appropriation is necessary to qualify for federal aid financing and reimbursement. Where general obligation bonds have been authorized for an appropriation, the amount of the bond authorization shall be reduced in an amount equal to the amount lapsed.

[Any appropriation for which the source is general obligation bond funds or general funds or any portion of any such appropriation which is effective on the date of ratification of this amendment and which is unencumbered on June 30, 1980 shall lapse on that date unless earlier lapsed by law; provided that no appropriation for which the source is general obligation bond funds nor any portion of any such appropriation shall lapse if the legislature determines such appropriation or any portion of such appropriation is necessary to qualify for federal aid financing and reimbursement. Where general obligation bonds have been authorized for an appropriation, the amount of the bond authorization shall be reduced in an amount equal to the amount lapsed on June 30, 1980.]"

SECTION 3. The question to be printed on the ballot shall be as follows:

"Shall the State be allowed to appropriate the funds of the state educational facilities improvement special fund for periods beyond three years to allow for acquisition or construction of public school facilities?"

SECTION 4. Constitutional material to be repealed is bracketed. New constitutional material is underscored.

## PROPOSED CONSTITUTIONAL AMENDMENTS

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Hawaii state constitution.

### S.B. NO. 3091

A Bill for an Act Proposing an Amendment to Article VII, Section 11, of the Constitution of the State of Hawaii.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Article VII of the Constitution of the State of Hawaii is amended by amending section 11 to read as follows:

#### “LAPSING OF APPROPRIATIONS

**Section 11.** All appropriations for which the source is general obligation bond funds or general funds shall be for specified periods, and no such appropriation shall be made for a period exceeding three years. Any such appropriation or any portion of any such appropriation which is unencumbered at the close of the fiscal period for which the appropriation is made shall lapse[; provided that no appropriation for which the source is general obligation bond funds nor any portion of any such appropriation shall lapse if the legislature determines such appropriation or any portion of such appropriation is necessary to qualify for federal aid financing and reimbursement]. Where general obligation bonds have been authorized for an appropriation, the amount of the bond authorization shall be reduced in an amount equal to the amount lapsed.

Any appropriation for which the source is general obligation bond funds or general funds or any portion of any such appropriation which is effective on the date of ratification of this amendment and which is unencumbered on June 30, 1980 shall lapse on that date unless earlier lapsed by law[; provided that no appropriation for which the source is general obligation bond funds nor any portion of any such appropriation shall lapse if the legislature determines such appropriation or any portion of such appropriation is necessary to qualify for federal aid financing and reimbursement]. Where general obligation bonds have been authorized for an appropriation, the amount of the bond authorization shall be reduced in an amount equal to the amount lapsed on June 30, 1980.”

SECTION 2. The question to be printed on the ballot shall be as follows:

“Should the exception that permanently prevents the lapsing of unencumbered general obligation bond funds which are deemed necessary by the legislature to qualify for federal aid financing and reimbursement be removed from the provision that requires the lapsing of all unencumbered funds at the end of each fiscal period?”

SECTION 3. Constitutional material to be repealed is bracketed.

SECTION 4. This amendment shall take effect upon compliance with Article XVII, section 3, of the Constitution of the State of Hawaii.

## PROPOSED CONSTITUTIONAL AMENDMENTS

### H.B. NO. 4142

A Bill for an Act Proposing an Amendment to Article VII, Section 12, of the Hawaii Constitution, to Allow the use of Revenue Bonds for the Funding of a State Property Insurance Program Providing Hurricane Insurance Coverage.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the destruction caused by Hurricane Iniki in 1992 resulted in an estimated \$1,600,000,000 in insured property losses to various areas of the State. Immediately after the hurricane, homeowners insurance, which included hurricane coverage, became difficult to obtain. Act 339, Session Laws of Hawaii 1993, created the Hawaii hurricane relief fund to encourage insurance companies to resume issuing homeowners' insurance policies in Hawaii. As a result of the law, insurance companies now issue homeowners' insurance policies that do not include coverage for hurricane risk. The Hawaii hurricane relief fund issues policies covering hurricane risk.

The legislature established several possible methods of funding the Hawaii hurricane relief program:

- (1) State revenue bonds;
- (2) Loan commitments from the federal government or any agency of the federal government, including federal disaster relief agencies;
- (3) Loan commitments such as lines-of-credit or standby bank facilities from financial institutions or other private sources; and
- (4) Any combination of the above.

Although revenue bonds are included as a possible means of financing the hurricane relief fund, Act 339 failed to amend the Hawaii State Constitution to expressly include this particular undertaking as a permissible use of revenue bonds. The purpose of this Act is to propose an amendment to the State Constitution to expressly authorize the use of revenue bonds to finance a loan program to make loans to the Hawaii Hurricane Relief Fund.

SECTION 2. Article VII, section 12, of the Constitution of the State of Hawaii is amended to read as follows:

#### **“DEFINITIONS; ISSUANCE OF INDEBTEDNESS**

**Section 12.** For the purposes of this article:

1. The term “bonds” shall include bonds, notes and other instruments of indebtedness.

2. The term “general obligation bonds” means all bonds for the payment of the principal and interest of which the full faith and credit of the State or a political subdivision are pledged and, unless otherwise indicated, includes reimbursable general obligation bonds.

3. The term “net revenues” or “net user tax receipts” means the revenues or receipts derived from [a]:

- a. A public undertaking, improvement or system remaining after the costs of operation, maintenance and repair of [such] the public undertaking, improvement or system, and the required payments of the principal of and interest on all revenue bonds issued therefor, have been made[.]; or
- b. Any payments or return on security under a loan program or a loan thereunder, after the costs of operation and administration of the loan program, and the required payments of the principal of and interest on all revenue bonds issued therefor, have been made.



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4. The term "person" means an individual, firm, partnership, corporation, association, cooperative or other legal entity, governmental body or agency, board, bureau or other instrumentality thereof, or any combination of the foregoing.

5. The term "rates, rentals and charges" means all revenues and other moneys derived from the operation or lease of a public undertaking, improvement or system, or derived from any payments or return on security under a loan program or a loan thereunder[.]; provided that insurance premium payments, assessments and surcharges, shall constitute rates, rentals and charges of a state property insurance program.

6. The term "reimbursable general obligation bonds" means general obligation bonds issued for a public undertaking, improvement or system from which revenues, or user taxes, or a combination of both, may be derived for the payment of the principal and interest as reimbursement to the general fund and for which reimbursement is required by law, and, in the case of general obligation bonds issued by the State for a political subdivision, general obligation bonds for which the payment of the principal and interest as reimbursement to the general fund is required by law to be made from the revenue of the political subdivision.

7. The term "revenue bonds" means all bonds payable from the revenues, or user taxes, or any combination of both, of a public undertaking, improvement, system or loan program and any loan made thereunder and secured as may be provided by law[.], including a loan program to provide loans to a state property insurance program providing hurricane insurance coverage to the general public.

8. The term "special purpose revenue bonds" means all bonds payable from rental or other payments made to an issuer by a person pursuant to contract and secured as may be provided by law.

9. The term "user tax" means a tax on goods or services or on the consumption thereof, the receipts of which are substantially derived from the consumption, use or sale of goods and services in the utilization of the functions or services furnished by a public undertaking, improvement or system[.]; provided that mortgage recording taxes shall constitute user taxes of a state property insurance program.

The legislature, by a majority vote of the members to which each house is entitled, shall authorize the issuance of all general obligation bonds, bonds issued under special improvement statutes and revenue bonds issued by or on behalf of the State and shall prescribe by general law the manner and procedure for such issuance. The legislature by general law shall authorize political subdivisions to issue general obligation bonds, bonds issued under special improvement statutes and revenue bonds and shall prescribe the manner and procedure for such issuance. All such bonds issued by or on behalf of a political subdivision shall be authorized by the governing body of such political subdivision.

Special purpose revenue bonds shall only be authorized or issued to finance facilities of or for, or to loan the proceeds of such bonds to assist:

1. Manufacturing, processing or industrial enterprises;
2. Utilities serving the general public;
3. Health care facilities provided to the general public by not-for-profit corporations;
4. Early childhood education and care facilities provided to the general public by not-for-profit corporations; or
5. Low and moderate income government housing programs, each of which is hereinafter referred to in this paragraph as a special purpose entity.

The legislature, by a two-thirds vote of the members to which each house is entitled, may enact enabling legislation for the issuance of special purpose revenue bonds separately for each special purpose entity, and, by a two-thirds vote of the

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members to which each house is entitled and by separate legislative bill, may authorize the State to issue special purpose revenue bonds for each single project or multi-project program of each special purpose entity; provided that the issuance of such special purpose revenue bonds is found to be in the public interest by the legislature. The legislature may enact enabling legislation to authorize political subdivisions to issue special purpose revenue bonds. If so authorized, a political subdivision by a two-thirds vote of the members to which its governing body is entitled and by separate ordinance may authorize the issuance of special purpose revenue bonds for each single project or multi-project program of each special purpose entity; provided that the issuance of such special purpose revenue bonds is found to be in the public interest by the governing body of the political subdivision. No special purpose revenue bonds shall be secured directly or indirectly by the general credit of the issuer or by any revenues or taxes of the issuer other than receipts derived from payments by a person under contract or from any security for such contract or special purpose revenue bonds and no moneys other than such receipts shall be applied to the payment thereof. The governor shall provide the legislature in November of each year with a report on the cumulative amount of all special purpose revenue bonds authorized and issued, and such other information as may be necessary.”

SECTION 3. The question to be printed on the ballot shall be as follows:

“Shall the State Constitution be amended to authorize the use of revenue bonds to finance a loan program to make loans to state property insurance programs that provide hurricane insurance coverage to the general public?”

SECTION 4. Constitutional material to be repealed is bracketed. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

**COMMITTEE REPORTS  
ON MEASURES ENACTED  
AND  
PROPOSED CONSTITUTIONAL AMENDMENTS**

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**TABLES SHOWING EFFECT  
OF ACTS**

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**GENERAL INDEX**

# COMMITTEE REPORTS ON MEASURES ENACTED AND PROPOSED CONSTITUTIONAL AMENDMENTS

**This is a compilation of committee reports on measures enacted and the  
proposed constitutional amendments passed during the 1996 Regular Session  
of the Eighteenth State Legislature**

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Key: Am = Amended  
N = New  
R = Repealed  
Sp = Special Session

— = Section number to be assigned in HRS Supplement

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6E-8	Am	13	40-— (2 secs)	N	40
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6E-11, 12, 42	Am	97	40-51	Am	231
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§ = Section of Act 287

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